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Maricopa County Indigent Defense Attorneys  
Case Weighting Study  
RFP # 01087  
February, 2003

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## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	1
<b>CHAPTER 1</b>	
<b><u>BACKGROUND TO THE STUDY</u></b> .....	2
1.1 National Standards.....	2
1.2 Arizona Case Law.....	5
1.3 Factors Affecting Public Defender Caseload Nationally and in Arizona.....	7
1.4 TSG Case-Weighting Methodology .....	10
<b>CHAPTER 2</b>	
<b><u>MEASURES EMPLOYED BY PUBLIC DEFENDER PROGRAMS TO ADDRESS</u></b>	
<b><u>CASELOAD PROBLEMS</u></b> .....	11
2.1 Measurement Methods Employed by Public Defenders to Develop Caseload Standards.....	11
<b>CHAPTER 3</b>	
<b><u>THE MARICOPA COUNTY PUBLIC DEFENSE SYSTEM</u></b> .....	13
3.1 The Arizona Court System.....	13
3.2 The Indigent Defense Agencies of Maricopa County.....	13
3.2.1 Office of the Public Defender .....	14
3.2.2 Office of the Legal Defender .....	14
3.2.3 Office of the Legal Advocate.....	15
3.2.4 Office of Contract Counsel .....	15
3.2.5 Reported Caseloads of the Agencies.....	16
3.3 Indigency Determination .....	16
3.4 Case Assignment and Conflict of Interest Determination .....	17
3.5 Criminal Case Processing in Maricopa County .....	19
<b>CHAPTER 4</b>	
<b><u>THE DAILY ACTIVITY LOG AND THE COLLECTION OF DATA</u></b> .....	22
4.1 Introduction.....	22
4.2 Designing and Testing the Daily Activity Log.....	23
4.3 Selecting the Sample.....	23
4.4 Structure of the Daily Activity Log .....	26
4.5 The Case Type Codes .....	27
4.5.1 Adult Felony Cases.....	27
4.5.2 Adult Misdemeanor Cases .....	29
4.5.3 Juvenile Cases .....	29
4.5.4 Dependency/Severance Cases.....	30
4.5.5 Mental Health Cases .....	31
4.5.6 Appeals Case Type Codes .....	31
4.5.7 "Other" Case Type Codes .....	32
4.6 The Activity Codes .....	32
4.6.1 Non-Case Related Activity Codes .....	35

4.6.2 Multiple, Short Activities .....	36
4.7 Disposition Codes .....	36
4.7.1 General Disposition Codes .....	37
4.7.2 Special Disposition Codes .....	37

## **CHAPTER 5**

<b><u>PROCESSING AND ANALYSIS OF THE DATA</u></b> .....	39
5.1 Processing the Data.....	39
5.2 Analysis of the Data.....	40
5.3 Total Hours By Case Type.....	48
5.4 Multiple Case Related Time .....	51
5.5 Calculation of the Average Net Attorney FTE .....	54
5.6 Analysis of Disposition Data .....	57
5.7 Average Hours Per Disposition .....	60
5.8 Cases with Enhancers .....	61
5.9 RCC and EDC Attorney Data .....	63
5.10 Caseload/Workload Standards .....	67
5.11 Limitations on Caseload/Workload Standards.....	68

## **INTRODUCTION**

In October 2001, The Spangenberg Group (TSG) was selected to conduct an indigent defense case-weighting study for Maricopa County, Arizona. Maricopa County is Arizona's largest county, with 3,072,149 residents, and over the years the county has adapted its indigent defense system to accommodate the growing population and criminal and juvenile court caseload. The purpose of the case-weighting study was to 1) assess agency workload of the four county agencies that currently provide indigent defense services (the Offices of the Public Defender, Legal Defender, Legal Advocate, and Contract Counsel) and 2) establish a method for determining appropriate attorney levels and projecting attorney staff needs based on workload.

TSG is a nationally and internationally-recognized criminal justice research and consulting firm which specializes in indigent defense services. Incorporated in 1985, TSG has conducted research in all fifty states and provides consultative services to developing and developed countries which are reforming their legal aid delivery programs around the world. TSG has conducted comprehensive case-weighting studies for the following organizations in the last decade:

- Minnesota State Board of Public Defense
- The New York Legal Aid Society, Criminal Defense Division
- California Office of the State Public Defender<sup>1</sup>
- Colorado State Public Defender
- Tennessee District Public Defenders Conference
- King County, Washington indigent defense system
- State Public Defender of Wisconsin.

In addition, TSG recently completed a follow-up study for the Colorado State Public Defender to verify and update the case standards developed in 1996, and we are in the final stages of a case-weighting study for the indigent defense system of Pima County, Arizona.

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<sup>1</sup> A joint endeavor with the National Center for State Courts.

# CHAPTER 1

## BACKGROUND TO THE STUDY

### 1.1 National Standards

In response to the rising crime rate and change in constitutional requirements within the criminal justice system in the last three decades, the American Bar Association (ABA) has taken a leadership role in developing a set of standards and goals for each component of the criminal justice system. These are found in the ABA's Standards Relating to the Administration of Criminal Justice. Two chapters of this document address the subject of indigent defense. Chapter 4 is devoted to the prosecution and defense functions, while Chapter 5 is concerned with the provision of defense services.

Standard 4-1.3 of Chapter 4 deals with the ethical considerations regarding a defense lawyer's workload. It states:

- (e) Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations.<sup>2</sup>

Chapter 5 provides a blueprint and set of standards for delivering defense services. It spells out in detail the requirements for both public defenders and privately appointed counsel in meeting their constitutional and ethical requirements. Standard 5-5.3 reasserts and builds on Standard 4-1.3:

- (a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. . . .
- (b) Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgement, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or

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<sup>2</sup> American Bar Association Standards for Criminal Justice, Prosecution Function and Defense Function, Third Edition (1993).

programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.<sup>3</sup>

While these statements, guidelines, and standards are extremely important, they do not provide specific guidance as to what is an excessive workload or what lawyers should do when they have reached the workload limit. More specific detail can be found by examining the work of two other national bodies which have attempted to deal with the problem: the National Study Commission on Defense Services and the National Advisory Commission on Criminal Justice Standards and Goals.

Under a grant from the U.S. Department of Justice, the National Legal Aid and Defender Association conducted a two-year study through the National Study Commission, which resulted in the publication in 1976 of the Guidelines for Legal Defense Systems in the United States. Chapter 5 of that report addresses the maximum criminal caseload for a defense attorney. Section 5.1 states:

- a. In order to achieve the prime objective of effective assistance of counsel to all defender clients, which cannot be accomplished by even the ablest, most industrious attorneys in the face of excessive workloads, every defender system should establish maximum caseloads for individual attorneys in the system.
- b. Caseloads should reflect national standards and guidelines. The determination by the defender office as to whether or not the workloads of defenders in the office are excessive should take into consideration the following factors:
  - 1. objective statistical data;
  - 2. factors related to local practice; and
  - 3. an evaluation and comparison of the workload of experienced, competent, private defense practitioners.<sup>4</sup>

Section 5.3, which deals with the elimination of excessive caseloads, states:

- a. Defender office caseloads and individual defender attorney workloads should be continuously monitored, assessed, and predicted so that,

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<sup>3</sup> American Bar Association Standards for Criminal Justice, Providing Defense Services, Third Edition (1992).

<sup>4</sup> National Legal Aid and Defender Association, Guidelines for Legal Defense Systems in the United States, Report of the National Study Commission on Defense Services (Washington, D.C.: NLADA, 1976), p. 411.

whenever possible, caseload problems can be anticipated in time for preventive action.

- b. Whenever the Defender Director, in light of the system's established workload standards, determines that the assumption of additional cases by the system might reasonably result in inadequate representation for some or all of the system's clients, the defender system should decline any additional cases until the situation is altered.
- c. When faced with an excessive caseload the defender system should diligently pursue all reasonable means of alleviating the problem including:
  - 1. declining additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned;
  - 2. actively seeking the support of the judiciary, the defender commission, the private bar, and the community in the resolution of the caseload problem;
  - 3. seeking evaluative measures from the appropriate national organization as a means of independent documentation of the problem;
  - 4. hiring assigned counsel to handle the additional cases; and
  - 5. initiating legal causes of action.
- d. An individual staff attorney has the duty not to accept more clients than he can effectively handle and should keep the Defender Director advised of his workload in order to prevent an excessive workload situation. If such a situation arises, the staff attorney should inform the court and his client of his resulting inability to render effective assistance of counsel.<sup>5</sup>

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in 1973. In that report, standard 13.12 on courts states:

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney

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<sup>5</sup> Ibid., p. 413.

per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.<sup>6</sup>

Commentary to Chapter 5 of the ABA Standards references the public defender caseload standards developed by NAC, noting they "have proven resilient over time, and provide a rough measure of caseloads."

## 1.2 Arizona Case Law

In 1984, the Arizona Supreme Court in effect adopted the NAC standards in the case of *State v. Joe U. Smith*, 681 P.2d 1374. In the *Smith* case, the Mohave County indigent defense system was challenged as systemically denying effective assistance of counsel. In its opinion, the court cited favorably the NAC standards and stated in part:

It is obvious that the caseload of the defendant's attorney was excessive, if not crushing. In making this determination, we do not base our opinion on the standards alone, but also on our own experience as attorneys and upon the request for compensation by attorneys appearing before this court who represent indigent defendants...The insidiousness of overburdening defense counsel is that it can result in concealing from the courts, and particularly the appellate courts, the nature and extent of damage that is done to defendants by their attorneys' excessive caseloads.<sup>2</sup>

The effect of *Joe U. Smith* on public defender and contract defender programs in Arizona is that attorneys have a legitimate basis on which to ask courts to limit new appointments when their caseloads become excessive. Still, while *Smith* gives Arizona defense attorneys a court-sanctioned mechanism to limit caseload to reasonable levels, the opinion has its limits. In issuing its opinion, the court itself relied upon a number of important factors, including: the time that an attorney is expected to spend in representing his/her share of indigent defendants; the failure of the system to provide for support costs such as investigators, paralegals and law clerks; the competency of an attorney providing representation; and the complexity of each case. To this extent, the court

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<sup>6</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186.

<sup>2</sup> *State v. Joe U. Smith*, 681 P. 2d 1374 (Ariz. 1984).

recognized that numerical standards as cited in the opinion, without any further definition, are not themselves sufficient.

Clearly, a first degree murder case will require more time of a court-appointed lawyer than will a burglary case. Both crimes are felonies, yet there is no distinction in counting different types of felony cases under *Smith*. It is also clear that the time necessary to handle an abuse and neglect case will almost always exceed that of the time necessary to handle a minor delinquency case. Yet, there is no distinction in the *Smith* standards between different types of juvenile court proceedings. The purpose of this study is to go beyond the *Smith* standards, and to develop caseload standards that reflect actual workload and work processing that are not tied only to a general definition of felony, misdemeanor, juvenile, mental health and appeals case.

Caseloads of individual attorneys in the Maricopa County Public Defender Office routinely exceed *Joe U. Smith* standards. We were told that the trial Division felony caseloads generally run about 15% over *Smith* standards; Juvenile and Appeals generally run about 60% over; Mental Health caseloads generally run about 85% over.<sup>3</sup> The public defender office generally does not automatically withdraw from cases when it reaches *Smith* case levels. Exhibit 1 provides data on the number of cases in FY 2001 and FY 2002 in which the public defender withdrew due to a conflict of interest or a *Smith* overload situation. Exhibit 2 shows the number of cases in which the public defender withdrew due to case overload by type of case from 1996-2000. Between FY 1996 and 1997, the felony caseload increased dramatically by over 3,500 felonies. The public defender handled over 19,000 felonies that year and although it added twelve staff attorneys, it still needed to withdraw from a large number of cases in 1997 due to the overload and delays in receipt of the additional funding to staff.

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<sup>3</sup> Specifically in FY 2002, according to Maricopa County Public Defender, felony caseloads were 10.85% over *Smith* standards and it is projected that in FY 2003 felony caseloads will be 13.86% over *Smith*. Juvenile caseloads were 58.00% over, and FY 2003 is projected to be 64.01% over. Appeals caseloads were 58.08% over and FY 2003 is projected to be 61.83% over. Mental Health caseloads were 81.95% over *Smith*, and FY 2003 is projected to be 87.83% over. Source: October 28, 2002 document received from the Public Defender Administrator.

**Exhibit 1**

<b>PD Withdrawals FY 2001 and FY 2002</b>	<b>Conflict Withdrawals</b>		<b>Workload Withdrawals</b>	
<b>Type</b>	<b>FY01</b>	<b>FY02</b>	<b>FY01</b>	<b>FY02</b>
<b>Appeal</b>	18	18	0	0
<b>Felony</b>	1405	1737	7	68
<b>Homicide</b>	29	49	0	0
<b>Juvenile Appeal</b>	2	2	0	0
<b>Juvenile Delinquency</b>	341	348	0	0
<b>Mental Health</b>	0	1	0	0
<b>Misdemeanor</b>	61	42	0	0
<b>PCR (incl. DP PCR &amp; App/PCR)</b>	225	289	0	0
<b>Probation Violation</b>	192	248	1	2
<b>SCAC (not incl. in MF)</b>	17	28	0	1
<b>Total</b>	<b>2290</b>	<b>2762</b>	<b>8</b>	<b>71</b>

Source: October 28, 2002 document received from the Public Defender Administrator.

**Exhibit 2**

<b>Public Defender Withdraw Workload, 1996-2000</b>					
<b>Fiscal Year</b>	<b>Felony</b>	<b>Homicide</b>	<b>SCAC</b>	<b>Probation Violation</b>	<b>Juvenile Delinquency</b>
<b>1996</b>	0	0	0	0	0
<b>1997</b>	572	4	14	16	10
<b>1998</b>	0	0	0	0	0
<b>1999</b>	0	0	0	0	0
<b>2000</b>	30	0	1	0	0
<b>2001</b>	7	0	0	1	0
<b>2002</b>	68	0	1	2	0
<b>Grand Total</b>	<b>677</b>	<b>4</b>	<b>16</b>	<b>19</b>	<b>10</b>

Source: October 28, 2002 document received from the Public Defender Administrator.

### 1.3 Factors Affecting Public Defender Caseload Nationally and in Maricopa County

The ability to weight cases and thus consider not just the raw numbers of cases assigned to a public defender program annually, but also the overall severity of cases handled by the program, is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally. For instance, "get tough on crime" legislation has been enormously popular around the country in recent years, resulting in indeterminate to life sentences for sex offense and habitual offender laws which may triple or quadruple sentences

upon conviction. At the same time, there has been an increase in arrests of suspected drug offenders, many of whom are non-violent, but are nonetheless demanding from a defense standpoint due to the need for multiple court appearances, the lack of treatment options and the lack of sentencing options other than prison.

Other important factors nationwide include:

- X changes in the economy, resulting in increased claims of indigency;
- X changes in statutes, case law, or court rules in individual states that increase the types of cases or proceedings for which counsel is required;
- X changes in public or office policy requiring the performance of additional tasks, e.g., preparation of sentencing reports and diversion recommendations, indigency screening, and appellate review;
- X changes in prosecutorial practices such as the institution of career criminal prosecution programs or policies limiting plea bargaining in certain types of cases;
- X changes in the method of case disposition or the stage at which cases are disposed, e.g., increase in trials, more frequent use of juries, fewer dismissals, less plea bargaining at early stages of the case;
- X changes in the case mix for public defenders with an increased percentage of more serious felony cases, and, in some programs, many more dependency cases;<sup>4</sup>
- X adoption of performance standards for indigent defense lawyers;
- X reductions in court processing time or other increases in court efficiency; and,
- X changes in statutes or court rules mandating procedural alterations such as speedier trials or preliminary hearings for certain classes of offenses.

Specifically in Maricopa County, there have been significant changes to criminal practice. Most recently, the primary factor impacting public defender practice in Maricopa County is the

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<sup>4</sup> These cases are called different things in various states, such as abuse and neglect, dependency, or deprivation cases. Public defenders in many jurisdictions are required to represent either parents/guardians or children in these cases. Programs responsible for these matters, which can remain in a lawyer's caseload for many years, report an explosion in the number of dependency cases in the past decade.

Arizona Supreme Court's adoption of standards that require that 99% of all felony cases be resolved within 180 days, and 90% within 100 days. This has resulted in the Maricopa County Superior Court's adoption of various projects and procedures designed to speed up the process. In July 2000 the court created a "continuance panel," which is a rotating group of judges before whom motions to continue trial must be brought. The actual trial judge in a case is only allowed to grant one, five-day continuance; any further continuance must be sought from the panel. The court's stated goal was to help create predictability; some judges granted continuances readily, others did not. However, public defenders feel the panel removes the decision on continuances from the judge who has some knowledge about the complexities of the case and puts it in the hands of a judge whose primary purpose is to expedite the resolution. They say the panel discourages granting motions to continue and thereby potentially chills the exercise of parties' rights.

Another primary factor has been the County Attorney's plea cutoff policy. Under this policy, most felony cases have a mandated plea deadline that cannot be changed by a line prosecutor without supervisory approval. This caused a tremendous amount of trouble when the plea deadline would arrive before all basic discovery was completed, leaving the defense attorney unable to adequately advise his client on the merits of the plea offer.

In reaction to the plea cutoff policy and the court's push for speedy resolution, the defense bar sought changes in the discovery rules to force a consistent response from the entire bench to enforce them. The Arizona Supreme Court appointed a committee to examine and revamp the discovery rules, which had been in place since the 1970's. After nearly two years of work, the committee made proposals and the court adopted sweeping changes. However, we are informed that the effective date of the changes has been delayed because of several motions to reconsider filed by prosecution and law enforcement representatives. The committee met for the last time on November 22, 2002. Several recommendations have been made by the committee, concerning the plea deadline provisions. The Maricopa County Attorney's Office has sought reconsideration and the Public Defender Office filed a response on January 15, 2003.

On June 24, 2002, the United States Supreme Court issued a decision in *Ring v. Arizona* (No. 01488) that affects the handling of death penalty cases in Arizona by invalidating Arizona's capital sentencing scheme. A death sentence in Arizona may not be imposed unless at least one aggravating factor is found to exist beyond a reasonable doubt, and prior to *Ring*, this sentencing determination could be made by a judge. Now, under *Ring*, sentencing in a capital case must be decided by a jury.

In response, the Arizona Supreme Court consolidated 31 cases of inmates on death row who had not yet exhausted their direct appeals in order to determine the full effects and possible retroactivity of *Ring* in Arizona. Although briefs have been filed and oral arguments were heard on November 19, 2002, the Arizona Supreme Court has not yet ruled in the matter. In addition, new legislation requires jury sentencing for all new capital cases, creating a significant increase in the upfront work required by attorneys, investigators and mitigation specialists.

#### 1.4 TSG Case-Weighting Methodology

The case-weighting model employed by TSG in Maricopa County requires public defenders or contract attorneys to keep detailed time records of their work over a given period of time, typically ranging from ten to thirteen weeks, on specially designed time sheets. The time records provide a means by which caseload (the number of cases handled) can be translated into workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). In Maricopa County, time records were kept for twelve weeks.

The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a criminal justice agency annually, but also the severity of various case types handled by the program. In the broadest context, weights can be given to the total annual caseload of a defender organization to compare to the next year=s anticipated volume of cases. Assuming that accurate records are kept of attorney time expended in each case during the study period, the development of workload standards and the determination of staffing needs for the projected caseload can be accomplished with some assurance of precision. (See Chapter 5 for further explanation on processing and analysis of case-weighting study data.)

## CHAPTER 2

### MEASURES EMPLOYED BY PUBLIC DEFENDER PROGRAMS TO ADDRESS CASELOAD PROBLEMS

Many statewide and local public defender agencies develop caseload standards in response to a desire of funders that the programs accurately account for requests for increased funding. Some funding sources become frustrated if public defenders are unable to justify their funding requests through reliable, quantitative measures. Such measures are necessary not only to justify funding requests but to permit funders to plan for reasonable year to year appropriations. Programs that have successfully addressed the problem share a common set of characteristics. They include:

- a current and user-friendly management information system that has reliable and empirical data;
- a statistical reporting procedure which has been accepted by the funding sources;
- a sound management system;
- effective communication between the public defender program and other criminal justice system components;
- the ability to tie caseload standards to budget request; and
- the ability to mobilize strong local support for the program.

#### 2.1 Measurement Methods Employed by Public Defender Agencies to Develop Caseload Standards

There are three basic methods used by public defender offices to develop caseload standards: unit-based, time-based and open file.<sup>5</sup>

The unit-based system is an attempt to establish a maximum number of cases that one public defender attorney can reasonably be expected to handle in a given year. The best example is the standards developed by the National Advisory Commission on Criminal Justice Standards and Goals, discussed earlier in this report. Almost 30 years later, the NAC standards are still the only nationally promulgated numeric standards governing the limitation of defender office trial and

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<sup>5</sup> These methods were identified by Professor Richard J. Wilson of the American University Law School in a paper entitled *Public Defender Caseloads and Common Sense*.

appellate caseloads. It is significant to note that these standards were developed exclusively by attorney estimates.

Under the time-based system, public defender attorneys report the amount of time that it takes them to perform specific tasks on various kinds of cases from intake to disposition. Public defender offices have conducted studies to measure these activities both through attorney estimates alone and through a more extensive case weighting process which involves filling out contemporaneous time records.

In the open-file method, public defenders establish a total number of open cases to be handled by any public defender attorney at any one time.

We feel that any reliable caseload study must be empirically based in order to assure reliability both for public defender management and the funding source. There are two acceptable methods to achieve these results: the Delphi Method and the Case-Weighting Method. The Delphi Method for developing caseload standards relies on estimates of the time required to perform numerous case activities for various types of cases. A sample of attorneys representing a broad range of experience, type of practice, and geographic diversity throughout the given jurisdiction is convened to provide estimates on carefully developed case scenarios. The Case-Weighting Method, which involves contemporaneous time sheets rather than estimates, is considered to be more reliable than the Delphi Method in developing caseload standards. It was this method that was employed in Maricopa County.

## **CHAPTER 3**

### **MARICOPA COUNTY PUBLIC DEFENSE SYSTEM**

#### **3.1 The Arizona Court System**

Arizona's court of last resort, the Supreme Court, has mandatory jurisdiction in civil, capital criminal, disciplinary, certified questions from federal courts, and original proceedings cases. It has discretionary jurisdiction in civil, non-capital criminal, administrative agency, juvenile, original proceeding, interlocutory decision cases and tax appeals. Five justices sit en banc in the Arizona Supreme Court.

The intermediate appeals court, the Court of Appeals, has mandatory jurisdiction in civil, non-capital criminal, administrative agency, juvenile, original proceeding and interlocutory decision cases. Twenty-two judges sit in panels in the Court of Appeals.

Arizona has two courts of general jurisdiction. Each of the state's 15 counties has a Superior Court, which has 159 judges statewide. There are 91 Superior Court judges in Maricopa County. The Superior Court has exclusive felony, criminal appeals and estate jurisdiction. It also hears misdemeanor, tort, contract, real property rights (over \$5,000) domestic relations and mental health cases. There is also one Superior Court Tax Court in the state which hears administrative agency appeals.

Arizona's courts of lower jurisdiction are Justice of the Peace Courts, which are located in 83 precincts, and Municipal Courts, which are located in 84 cities/towns. The 83 justices of the peace hear misdemeanor, DUI and miscellaneous criminal cases, as well as tort, contract, real property rights, domestic violence, moving traffic, parking and miscellaneous traffic cases. Justice of the Peace Courts have exclusive jurisdiction in small claims cases and preside over preliminary hearings. The 84 full-time and 51 part-time judges in Municipal Courts preside over domestic violence, misdemeanor, DUI, moving traffic, parking and miscellaneous traffic cases. They have exclusive ordinance violation jurisdiction.

Jury trials are held in Superior, Justice of the Peace and Municipal courts.

#### **3.2 The Indigent Defense Agencies of Maricopa County**

There are four agencies providing indigent defense services in Maricopa County, described below:

### 3.2.1 Office of the Public Defender

The largest indigent defense provider in Maricopa County, the Maricopa County Office of the Public Defender, was created in 1965 and at the time of the study employed 432 staff, including 234 attorneys. The Office has several divisions -- Administration, Appeals, Juvenile, Mental Health, and Trial -- which are housed in six different locations throughout the county. The Trial Division, which is divided into six groups, represents indigent adults in felonies, misdemeanors and probation revocations in Superior and Justice Courts. The Juvenile Division, which is located in two branches near the juvenile courts, represents children in delinquency proceedings. The Mental Health Division represents indigent defendants in court ordered evaluations, as well as annual and judicial reviews. The Appellate Division handles appeals and post-conviction relief in criminal cases as well as delinquency and mental health appeals.

### 3.2.2 Office of the Legal Defender

Over the years, Maricopa County's increasing criminal caseload resulted in increased conflict of interest and overflow cases for the Public Defender. Until the early 1990's, these cases were handled by private court-appointed counsel administered through the court system. Primarily because of a substantial increase in costs, the county took over the function from the court and established contracts with private attorneys. In 1995, the Office of the Legal Defender was created to provide the county with an alternate provider of legal representation to indigent defendants in public defender conflict of interest and overflow cases. Initially, the Legal Defender represented indigent defendants facing charges for serious offenses in Superior Court. Its caseload eventually expanded to include indigent parents involved in juvenile dependency and severance of parental rights actions.

At the time of our study, the Legal Defender had 73 staff members, including 37 attorneys. The office is divided into two main divisions: the criminal division, which handles felony cases, and the Juvenile Division, which represents parents in dependency/severance cases. Support staff positions have been developed to allow attorneys in both divisions to focus on their legal work. Staff in the Client Services Division assist attorneys with preparation of death penalty cases for trial and mitigation hearings. Case Preparation Managers in the Juvenile Division maintain contact with client and families, court programs, state agencies and other pertinent interested parties.

### 3.2.3 Office of the Legal Advocate

The creation of the Legal Defender helped the County contain its costs incurred from the private attorney contract program. The County decided to further contain costs by opening a third defender agency -- the Office of the Legal Advocate -- in 2000. The office has two main divisions: Adult Representation and Juvenile Advocacy and at the time of the study had over 50 staff, including 23 attorneys. The Adult Representation Division represents indigent defendants in cases assigned from arraignment court as well as cases that have been transferred to it from the Public Defender and Legal Defender due to a conflict or overflow situation. The office handles major felonies, including capital cases, and sexually violent predator cases, and felony appeals. The Juvenile Advocacy Division represents children in dependency cases. Similar to the Legal Defender, the Legal Advocate's Juvenile Advocacy Division staffs dependency cases on a team basis, using case service coordinators to work closely with attorneys and clients.

### 3.2.4 Office of Contract Counsel

Finally, Maricopa County's Office of Contract Counsel (OCC) has contracts with private attorneys to represent indigent persons in all matters not handled by the three staff agencies. The OCC issues contracts for representation in eight different case types: appeals, juvenile delinquency, dependency/severance, major felonies, mental health, post conviction relief, probate and trial/witness. Some of the cases handled by contract attorneys are conflicts of interest with the defender agencies or are cases in which the defender agencies withdrew for various other reasons. Other cases are appointed directly to the contract attorneys. None of the defender agencies handles probate cases; these are all handled by contract attorneys and were not included in the time study. Since the Legal Advocate was created, the County has shifted some of the funding that previously went to the OCC for serious felony contracts and sexually violent predator cases to the Legal Advocate, thereby reducing the number of contracts. Except for dependency cases, case assignments to contract attorneys are made by OCC staff after it is determined the cases cannot be handled by the Legal Defender or Legal Advocate. Dependency cases are assigned to the OCC via electronic order from juvenile court judges.

### 3.2.5 Reported Caseloads of the Agencies

Maricopa County does not maintain a central database for counting, tracking, and comparing case data for each of the indigent defense agencies. The case-tracking computer system for the Superior Court does not track either assignments or dispositions for the four agencies. Therefore, one must look to the agencies themselves for reporting their case data.

We attempted to set out and compare case assignments for each of the three defender offices for this report, but we were unable to do so because the offices lack a uniform case counting method. In counting case assignments to the offices, two methods are used. One method is referred to as “net case assignments”; this method does not count any cases for which there is a withdrawal at any time after assignment, for any reason even when there was significant work performed on the case. The other method is referred to as “adjusted case assignments”; this method is intended to reflect workload rather than just caseload and includes cases for which there is a withdrawal after arraignment due to conflict or private counsel being retained, but does not include cases which are transferred at an early stage to another office for reasons such as past representation. Although the Public Defender Office tracks and reports on both net and adjusted cases, the Legal Defender Office uses only adjusted cases, while the Office of the Legal Advocate uses only net cases. It is therefore impossible to provide any sort of meaningful comparison of case assignments across the agencies.

Similarly, there is no central county database for reporting dispositions of the four agencies. Again, the agencies use different case tracking methods for dispositions which are not comparable and which prohibit the exact comparison of dispositions between those reported in the time study and those maintained by the agencies.

However, Maricopa County is in the planning and development stage of an Integrated Criminal Justice Information System (ICJIS) program. The stated purpose of the ICJIS program is to facilitate the integration of the information systems of the county’s criminal justice agencies, including each of the four agencies involved in this study. We strongly recommend that the new ICJIS have the ability to track the number of case dispositions that occur after assignment to attorneys (not just after assignment to an agency) in order to make use of the caseload standards developed by this study. During the study, all case dispositions were recorded by attorneys after assignment.

### 3.3 Indigency Determination

Indigency determination in Maricopa County is performed by Pretrial Services (PTS), a department of the court. PTS staff meet with in-custody defendants before their initial appearance and fill out a financial questionnaire. The form is filled out based only on the defendant's answers. No effort is made to verify or expand on the information supplied. The questionnaire is presented to the hearing officer at the defendant's Initial Appearance, and an indigency determination is made. If the defendant is impaired or uncooperative when the PTS staffer talks to him, the questionnaire is not completed, and the person is deemed indigent. In some courts, such as the Early Disposition and Probation Violation Courts, no attempt is made to screen for indigency. The vast majority of all defendants who are eligible for appointed counsel in Maricopa County are represented by the Public Defender's Office.

The Office of the Public Defender recently started a project to improve indigency screening and to highlight perceived deficiencies in the current process. The Public Defender office obtained access to the Arizona Department of Economic Security database that provides information on individuals' incomes over the last three years. In a pilot project begun in the Early Disposition Court ("EDC"), the Public Defender Office runs the names of out-of custody defendants summonsed into EDC through the database to pre-screen them. The screening revealed that some 28% of these individuals earn over \$15,000 per year, and 5% make over \$30,000 per year. EDC staff look more closely into a defendant's ability to hire an attorney if he or she has an annual income of at least \$15,000. The Public Defender found that many of the defendants in EDC facing simple drug possession charges are employed full-time. These cases typically take no longer than three hours of attorney time to resolve, thus hiring counsel is not prohibitively expensive for individuals with some income. The Public Defender worked with the Maricopa County Bar Association to set up a referral list of private attorneys who will take EDC cases at a reasonable fee and trained attorneys who agreed to participate. The public defender office is not yet withdrawing from cases under this pilot project.

### 3.4 Case Assignment and Conflict of Interest Determination

All adult cases of a type handled by the Public Defender's office are presumptively assigned to the Public Defender, except when there is an obvious conflict or there are multiple co-defendants. Obvious conflicts, such as co-defendants, are picked up by Court Administration when cases first

come into the system. Once the Public Defender office is assigned a case, trial group supervisors, assisted by investigators, do a preliminary conflict check by going over discovery and running defendants' names through the office's database. Thereafter, attorneys who are assigned cases do conflict checks when new witnesses are noticed or new information comes to light, and file motions to withdraw when appropriate.

The public defender office enacted a written conflicts policy several years ago that requires attorneys to review potential conflicts with a supervisor before moving to withdraw. Under Arizona law, former representation of a witness or co-defendant is not necessarily a conflict requiring withdrawal. The attorney must look at the file of the former client to determine whether the office has actual knowledge of confidential and material information. This policy has been recognized by the Court of Appeals as a prudent and ethical way to do business.

In juvenile delinquency cases, case assignments are made when a petition from the County Attorney's Office, along with discovery, goes to the Public Defender's Office. If the public defender staff discover a conflict, the case file is sent to the Office of Contract Counsel to be re-assigned.

When a public defender withdraws from a case, the judge who granted the withdrawal normally contacts either the Legal Defender or the Legal Advocate for assignment, depending on the case. If the defendant is charged with a homicide or is otherwise represented by the Legal Defender, the court contacts the Legal Defender for appointment. In other cases, the court contacts the Legal Advocate for appointment. Other times, the Office of Contract Counsel will receive notification of a conflict from the court, and the office's administrator determines whether the case fits the criteria for representation by either the Legal Defender or the Legal Advocate. The criteria for agency representation reportedly change, but contain a number of factors such as the case type and court location. If neither agency can handle the case, then the Office of Contract Counsel assigns the case to a contract attorney.

In dependency matters, which are not handled by the Public Defender's Office, the Office of Contract Counsel receives notification of new cases from the court along with an order to appoint an attorney. The notification is also sent to the Legal Defender and the Legal Advocate with a request to determine whether a conflict exists. If neither agency can handle the case, the Office of Contract Counsel will assign it to a contract attorney.

### 3.5 Criminal Case Processing in Maricopa County

Over the past decade in Maricopa County, there has been a 90% increase in felony cases filed in Superior Court. In 2001, there were approximately 28,100 new felony case filings, more than 900 criminal jury trials were conducted, and the trial rate was 3.2%. In the surrounding fiscal years, the trial rates were similar at 3.3% in 2000 and 2.8% in 2002.

Arrested defendants appear in the Initial Appearance (IA) court before a judge or commissioner within 24 hours from arrest. It is a non-adversarial proceeding; there is no public defender and no county attorney at IA court. The County Attorney gets 48 hours to file a case following the initial appearance. If the case is not filed in this time, it is considered a “scratch.” We were told the county attorney scratches roughly 50% of all cases after determining there is a low likelihood of conviction of the case as it stands at that point (cases can re-enter the process.) In felony cases, if the case does not scratch, probable cause is determined at a preliminary hearing before a justice of the peace or by a grand jury. If the County Attorney seeks to establish probable cause at preliminary hearing rather than grand jury, the public defender office will receive the police report in time to meet first with the client and decide whether the client will attend the hearing, enter a guilty plea, or waive the preliminary hearing for arraignment in superior court. Preliminary hearings are held approximately 10 days following the IA for in-custody defendants, and approximately 20 days following the IA for out-of-custody defendants.

The first appearance of a defendant in superior court is arraignment, which is held within 20 days after arrest. This is when the defendant is informed for the first time of the exact nature of the charges filed against him. (Arraignment for misdemeanor cases is held at a justice court.) If probable cause was determined via a grand jury, arraignment will be the first stage at which a defendant is represented by a public defender. A pre-trial conference is held approximately 35 days after arraignment.

The public defender office monitors the daily Initial Appearance docket for two categories of cases: homicides and juveniles charged as adults. The office initiates representation of clients in these types of cases prior to filing of charges by the County Attorney.

The courts have initiated several programs to increase the rate of felony case processing. One innovation was the creation of regional felony court centers, or RCCs. The RCC program consolidated the felony processing of 23 justice courts into three regional superior court centers. It

simplified early felony processing by having defendants appear for their preliminary hearings and arraignments in superior court on the same day. The new process eliminated the usual 10-day delay for cases transferred from preliminary hearing in justice court to arraignment in superior court. Preliminary hearings are held within 10 days of IA at the Regional Case Centers if the defendant is in custody and within 20 days if the defendant is released. Felony cases are now direct-filed into superior court through the RCCs, effectively taking the justice courts out of the felony business altogether. Certain cases, such as sex cases or violent charges, are not resolved at this point, but many others are. We were informed by the courts that 55% of all cases reach resolution in the regional court centers.

A second program initiated in the Superior Court in Maricopa County is the Early Disposition Court (EDC). Some of the more minor felony cases are directed to EDC where attempts are made to dispose of them. Cases that go to EDC include simple drug possession cases, welfare fraud cases, and other non-violent offenses. Like RCC, EDC attempts to resolve cases with non-trial dispositions.

Another innovation is the motion to continue calendar, or continuance calendar, as discussed earlier in the report. Another relatively new development is the use of settlement conferences, which are specifically designed to settle cases. The parties set up a time with a judge, not the assigned judge, to meet with the parties and the defendant. At this conference, the judge and attorneys discuss the case in an effort to settle it. At times, the judge will call a supervisor in the county attorney's office to attempt to get a better deal, as deputy county attorneys generally don't have much authority to reduce charges. In other cases, the judge will attempt to convince the defendant that the deal is reasonable. These conferences are held prior to the County Attorney's plea cut-off date. For indicted cases, the presumptive cut-off date is 90 days after arraignment. For preliminary hearing cases, the presumptive cut-off date is 42 days after arraignment. There are exceptions for homicides, sex offenses and wiretap cases.

Prosecutorial charging practices affect overall criminal workload of the county's criminal justice system. The county attorney's office has a capital review committee of seven or eight senior prosecutors that screens each first degree murder case to see if the death penalty is warranted. A rule of criminal procedure (Rule 15.1(g)) requires the state to file a notice of intent to seek the death penalty within 30 days of arraignment. Effective December 1, 2002, if not stayed, the time limit will be 60 days. The prosecutor does not have to prove any aggravator before filing for death; they just

have to notice it and provide discovery concerning it. The County Attorney reportedly announces death will be sought on 30% of all first degree homicides filed. The charge can be withdrawn later. On average, death penalty cases take two years to resolve. Murder and sex offense cases are reportedly the toughest to resolve. Wire tap cases are time consuming, but there are not many of them.

## **CHAPTER 4**

### **THE DAILY ACTIVITY LOG AND THE COLLECTION OF DATA**

#### **4.1 Introduction**

This chapter describes the technical aspects of developing the Daily Activity Log and its accompanying Instructions Manual. It also describes the sampling process used to select the participating attorneys, the data collection process, the procedures used to process the data, and the process for grouping the data for analysis.

The primary purpose of the case-weighting study was to provide Maricopa County with a reliable and credible basis for developing appropriate staffing need estimates for the Public Defender, Legal Defender and Legal Advocate, and to provide the Office of Contract Counsel with better information on which to base requirements for the various types of contracts it uses. To design a workload measurement approach that would be consistent with the nature of criminal and juvenile case practice in Maricopa County, we needed to satisfy three requirements:

- First, the time sheet needed to account for all of the hours that defense attorneys worked during the twelve-week period of the study. This included time spent directly providing representation in individual cases, activities that were not directly related to an individual case but are part of the work of a public defender or contract attorney, and, for defender attorneys, time away from work, e.g., vacation time or sick time.
  - Second, the methodology developed needed to be minimally intrusive to the sample of attorneys as they recorded their activities on a daily basis.
  - Third, the methodology must assure that the time recorded reflected the totality of the actual environment in which defenders work, including travel and waiting time.
- Finally, the results of the study must be translated into workload standards that are suitable and reliable for predicting future staffing needs.

To collect data for the case-weighting study we used a self-recorded measurement approach whereby a sample of attorneys from each of the three defender agencies and contract attorneys would complete daily time sheets for 12 consecutive weeks. This approach offered the advantage of establishing the empirical basis that Maricopa County needed, and yet limited intrusion on the participating attorneys' work environment.

#### 4.2 Designing and Testing the Daily Activity Log

Although TSG has conducted case-weighting studies of a number of public defender programs, development of the Daily Activity Log -- the instrument on which attorneys record their time over the study period -- is necessarily different in each jurisdiction, due to the variations in criminal law and practice throughout the country. There is no “off the shelf” time sheet that can be used by any public defender or contract program for a case-weighting study.

To develop the time sheet, Robert Spangenberg, Marea Beeman and David Newhouse met in Phoenix with two advisory groups of attorneys representing the three staffed defender agencies. A larger advisory group helped us design the case type codes and activity codes for trial, juvenile delinquency, mental health and appeals cases. A smaller group met with us to develop codes for work on dependency/severance cases, which entail significantly different practices from these other case types.

After getting initial input from the two advisory groups on design of the timesheet,<sup>6</sup> we developed a draft version of the timesheet and returned to Phoenix to meet again with the two advisory groups to get their input into a more refined version of the Daily Activity Log. After making yet more modifications to the initial draft, we developed a second draft and returned again to train the advisory group members on how to use the draft time sheet for a 3-day test period. Following this test period, the participating attorneys gave us valuable feedback on how well the Daily Activity Log allowed them to track the work they perform. Following the pre-test, we developed a final draft of the Daily Activity Log.

Once the necessary changes were made and final versions of the Daily Activity Log and Instructions were produced, the next step was to select the full sample of attorneys to participate in the time-tracking phase of the study.

#### 4.3 Selecting the Sample

In developing the sampling strategy for the time study, the sampling unit was defined as the “attorney-day.” The study was planned to cover the 12-week period from April 17 - July 9, 2002. A 12-week period was considered sufficiently long to capture the range of activities performed by

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<sup>6</sup> Although we used two separate advisory groups, we developed just one daily activity log that was used by all attorneys participating in the time study.

attorneys in the various agencies and in various types of cases. The sampling strategy called for a sample of sufficient size to be representative of the universe of the total attorney days across the four agencies during the 12-week period.

Despite efforts to involve the same level of contract attorneys in the time study, we were not successful. Only 13 contract attorneys completed a sufficient number of time sheets to be included in the study. Because of the small number of participating contract attorneys, we were not able to develop caseload or workload standards exclusively for the contract attorneys. We did, however, include their time in the overall set of data for the 160 attorneys participating in the study. For the total overall sample level, we decided to use a sample size greater than the minimum level considered sufficient to achieve statistical confidence in order to enhance the validity of the workload measurement standard resulting from the study. This is a method that we have applied to all case-weighting studies that involve estimating staffing needs for budgeting purposes.

At the time we drew the sample, attorney staffing for the three defender agencies was as follows: the Public Defender - 234 attorneys (including part-time attorneys); the Legal Defender - 31 attorneys; and the Office of the Legal Advocate - 23 attorneys.

The sample of attorneys contained attorneys who provide representation within all classifications of juvenile, misdemeanor and felony cases as well as mental health, appeals and dependency/severance cases. The majority of attorneys in the public defender's office handle mixed caseloads of misdemeanors, felonies, and complex felonies of varying degrees of severity, depending on experience. The only public defender attorneys that specialize are those assigned to the Homicide and DUI Units. Legal Defenders handle a higher percentage of complex felonies, but continue to handle some non-complex felonies. Legal Advocates generally handle complex (major) felonies, with the occasional non-complex conflict from the legal defender's office. Neither the Legal Defender nor the Legal Advocate handle misdemeanor cases. Some of the contract attorneys who participated handled more than one case type (e.g., delinquency and dependency/severance or major felony and appeals).

We stratified our sample by office and by experience level and included in the sample the attorneys who participated in the pre-test. Attorneys with varying levels of experience and practice areas were selected to achieve a balance reflective of the overall staffing of the Maricopa County indigent defense system. This accounted for the fact that inexperienced attorneys require

significantly more time than their more experienced counterparts in providing representation to their clients.

Several attorneys were not eligible for the study and not included in the sampling selection because they had extended vacations planned for the period during the time-keeping phase of the study, or because they had indicated they would be leaving the program soon. In addition, attorneys with less than six months experience were excluded.

Our initial goal was to select a total sample of at least 65 percent of all eligible attorneys. Eligible attorneys from the public defender office were broken down into the following groups for purposes of the sample selection: trial; complex crimes; mental health; Early Disposition Court (EDC); juvenile delinquency; Regional Court Center (RCC); lead attorneys; trial group counsel; trial group supervisors; and appeals. A random selection of at least fifty percent of the attorneys within each of these groups was made, except for the smaller groups (complex crimes, mental health, and trial group supervisors) where all attorneys were selected in order to increase the accuracy of the data and more accurately reflect the time of those attorneys in the smaller groups.

The sample of Public Defender attorneys was created by a random process of counting within each group until the sample was selected. At the end of the random selection, there were 119 public defender attorneys chosen for the sample. To this, five attorneys who were involved in the pilot test were added, and one attorney was dropped due to a pending leave of absence. The total original sample of attorneys from the public defender office consisted of 123 attorneys. Of these, 106 attorneys were included in the database analyzed for this report. Several attorneys were excluded because they turned in fewer than 30 time sheets and for other reasons described above.

In order to receive a statistically significant amount of data with which to analyze the time spent by attorneys at the Legal Defender and the Office of the Legal Advocate, all attorneys in these two smaller offices who were eligible for the study were included in the sample. In the legal defender office, 27 attorneys were originally eligible for the study and 24 are included in the database for purposes of the study. In the Office of the Legal Advocate, 19 attorneys were originally eligible for the study and 17 were included in the sample.

In the end, the total number of staff attorneys from the three defender agencies included in the database for the study was 147, out of a total of 234 eligible staff attorneys, for a total of 63 percent. Only 13 contract attorneys turned in more than 30 time sheets. Data from these 13

attorneys were included in the database for this study. With the 13 contract attorneys, the final total sample size used for analysis in this report is 160 attorneys.

Before the twelve-week time-tracking period began, The Spangenberg Group held seven training sessions over three days in the Public Defender Training Room at 11 West Jefferson Street. Each participating attorney was required to attend training, thus the training sessions were held in the morning and afternoon for several days and on one evening to ensure that all attorneys, even those with heavy court schedules, would be able to attend training. At the sessions, attorneys were introduced to the mechanics of the Daily Activity Log, and then provided with a number of hypothetical exercises for which to code time. The time sheets did not require identification of individual attorneys or clients. Each participant was assigned an identification number or “attorney number” and instructed to include this number, and not their name, on their time sheets each day. The attorney numbers enabled researchers to track completed time sheets as they were submitted, while assuring attorneys anonymity. Attorneys had the option of submitting some or all of their time on a web-based version of the time sheet designed by David Newhouse.

#### 4.4 Structure of the Daily Activity Log

Each Daily Activity Log, or time sheet, captured in great detail the activity of public defenders over a potential 24-hour period, beginning with the time they began work to the end of their work day. Attorneys were required to track their “start and stop” times in 10-minute increments; any activity occurring out-of-court and taking longer than 10 minutes was recorded. All time on work performed in court and on the record was to be recorded, whether it lasted fewer than 10 minutes or longer. Attorneys were required to provide start and stop times for all activities according to the specific type of activity performed (e.g., preparing a motion, participating in training, or waiting in court). In addition, they were required to specify what type of case the activity was performed on behalf of (e.g., Felony DUI or Class 1 Misdemeanor). If the activity performed was non-case-related (e.g., lunch break or administrative work), they made the appropriate entry.

The time sheet design employs codes broken into three broad categories: case type codes, activity codes and disposition codes. The Maricopa County time sheet contained 33 specific case type codes reflecting felony, misdemeanor, juvenile, dependency, mental health and appeals cases handled by attorneys in Maricopa County’s indigent defense system. In addition to these specific

case type codes, the time sheet had several other “multiple case-related” codes in the case type code section. Multiple case-related codes (codes 34 - 38) were available for adult, juvenile, dependency, mental health and appeals cases and were used to record multiple activity occurrences (same or different activities) related to more than one adult, juvenile, dependency, mental health or appeal case type, and which could not be recorded individually due to their short duration.<sup>7</sup> Another case type code was provide for Trial Witness Representation - a category that covered such work in any type of case. Finally, the time sheet had a non-case related case type code which was used to code time spent by attorneys on activities that were not related to their indigent defendant cases.

The Activity Code section of the time sheet contained individual codes for different types of work performed on cases in and out of court, as well as for activities that were not related to cases. Recognizing that all of the attorneys were working off a single time sheet, and that most of the sample attorneys handle just one or at the most two types of cases, we designed the time sheet with separate in-court activity code sections for adult (felony and misdemeanor), juvenile, dependency, mental health and appeals cases. This design made it easier for attorneys to code their in-court activities. One set of codes for out-of-court related activities and non-case related activities was used by all of the attorneys in the sample. In all, the time sheet contained 64 activity codes to choose from.

Finally, like the activity codes section of the time sheet, the disposition codes section was designed with general codes for use by all attorneys and specialized codes for use by attorneys working in juvenile, dependency, appeals and mental health cases. Greater detail on the individual codes of the time sheet follows.

#### 4.5 The Case Type Codes

To ensure that the complete picture of public defender, legal defender, legal advocate and contract attorney representation would be recorded during the time-recording phase, codes representing numerous case types were included on the Daily Activity Log. It was not sufficient to break out the case types into the broad categories of juvenile, dependency, mental health, misdemeanor, felony and appeals. The amount of time required to provide representation in some

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<sup>7</sup> An example of when to use this code for adult cases was holding a series of brief telephone calls with clients who have various types of felony cases. For juvenile cases, the code was appropriate to use when, for example, an attorney spent time at a detention center advising juveniles facing different charges - misdemeanor, felony, sex assault, and/or violent juvenile offender charges - prior to the filing of the cases.

categories of cases varies greatly, so to account for these variations it was necessary to create sub-classifications within the broad categories. After consulting with the advisory group of attorneys from the three defender offices, and in conjunction with the administrators of the offices, we selected the various case types that should be included in the time sheet.

The Daily Activity Log had 40 different case type codes. Thirty-three of these corresponded to specific case types and 6 corresponded to more general case types. In addition, one code, “non-case related,” was to be used when coding time for work that was not related to individual cases.

#### 4.5.1 Adult Felony Cases:

There were seven different case type codes for adult felony cases. The case type codes were based upon workload factors that were thought to reflect the amount of time required to defend various case types. The workload factors incorporated into the felony case types were as follows:

- Potential or Actual Capital Case: These cases were classified separately due to the substantial amount of time required to defend them, in addition to the importance of potential for the death penalty. Each of these elements was perceived to increase the work required in handling various classifications of felonies, therefore the case types were grouped both by classification and according to these elements.
- All Other Homicide Cases: These cases were classified separately due to the substantial amount of time required to defend them and the need to consider them independently from potential or actual capital cases. Vehicular homicides were included in this case type.
- Dangerous Crimes Against Children Cases: These cases were classified separately due to the substantial amount of time required to defend them and their uniqueness from other felonies.
- Class Felonies: These case type codes allow for different severity level classifications as set forth by Arizona statutes. We collapsed Class 2 felonies with Class 3 felonies based upon the consensus that the amount of effort put into these cases is about equal. Additionally, we collapsed Class 4 felonies with Classes 5 and 6 felonies by the same reasoning.

- DUI Cases: These cases were classified separately due to the substantial amount of time required to defend them and their uniqueness from other felonies.
- Violation of Probation: These cases were classified separately due to their uniqueness from the other felony case types.

The resulting felony case types were:

Code 1:	Potential or Actual Capital Case
Code 2:	All Other Homicide
Code 3:	Dangerous Crimes Against Children
Code 4:	Class 2-3 Felony
Code 5:	DUI
Code 6:	Class 4-6 Felony
Code 7:	Violation of Probation (without new charges).

#### 4.5.2 Adult Misdemeanor Cases:

The three adult misdemeanor case type codes were:

Code 8:	Class 1
Code 9:	Class 2-3
Code 10:	DUI

#### 4.5.3 Juvenile Cases:

The seven juvenile case type codes were:

Code 11:	Juvenile Felony
Code 12:	Juvenile Misdemeanor
Code 13:	Juvenile DUI
Code 14:	Incorrigible
Code 15:	Violation of Probation
Code 16:	Sex Crimes
Code 17:	Drug

Many adult criminal and juvenile cases involve numerous charges. When working on a felony case with multiple charges, attorneys were instructed to record all time spent on the case by using the case type code for the top charge. For example, if an attorney had a client charged with vehicular homicide and felony DUI, they were told to code all work performed on the case with the All Other Homicide case type code. However, if there was no homicide, capital or potential capital charge, there was an exception to this rule. If a client faced a Dangerous Crimes Against Children (DCAC) charge as one of multiple charges (e.g., sexual abuse and a class 2 felony), the DCAC charge, regardless of its severity, takes precedence and all activity with regard to this complaint was to be coded with DCAC case type code. Attorneys handling juvenile cases were instructed to follow a similar procedure with multiple charge cases. If one of the charges was for a sex crime, all work performed on the case was to be coded with the Sex Crimes case type code. Otherwise, the case type code for the top charge was used.

#### 4.5.4 Dependency/Severance Cases

The life of a dependency case is much different from a felony, misdemeanor or juvenile delinquency case. For one thing, depending on the situation of the child and parent or adult involved, a dependency case can remain in an attorney's caseload for years, until the child turns 18. In addition, each dependency case has the potential to also become a severance, guardianship or an appeal. Although they are not really separate "cases," due to the various amounts of work involved in these different stages, separate case type codes were developed for these milestones. For example, time spent on a case in which a severance petition has been filed, preparing for and attending the severance hearing was to be coded with the severance case type code. Likewise, when work involved preparing for and attending a guardianship hearing, the guardianship case type code was used. The rest of the time, unless the attorney was working on an appeal, the dependency case type code was used, e.g., for all time working on the initial dependency determination and, once dependency is established, for work pertaining to report and review hearings, foster care review board hearings, etc.

The dependency case type codes were:

Code 18:      Dependency

Code 19:      Severance

Code 20:       Guardianship  
Code 21:       Dependency Appeal.

#### 4.5.5 Mental Health Cases

There were four case type codes for mental health cases:

Code 22:       Court Ordered Evaluation  
Code 23:       Annual Review  
Code 24:       Judicial Review  
Code 25:       LARC Matter.

#### 4.5.6 Appeals Case Type Codes

There were eight appeals case types:

Code 26:       Felony Appeal  
Code 27:       Misdemeanor Appeal  
Code 28:       Juvenile Appeal  
Code 29:       Plea PCR  
Code 30:       Trial PCR  
Code 31:       Special Action (includes adult criminal, juvenile, mental health)  
Code 32:       Petition for Review  
Code 33:       Mental Health Appeal.

The workload study attempted to differentiate between the amount of work involved when an appellate attorney is working on an issues brief or an *Anders* brief. Typically it is assumed that it will take longer to prepare an issues brief than an *Anders* brief.<sup>8</sup> We wanted to test that assumption and, if correct, develop separate caseload standards for issues and *Anders* briefs. Therefore, appellate attorneys were instructed to write an “A” after the case type code when it is clear that an *Anders* brief will be filed and an “S” after the case type code when it is clear an issues brief will be filed.

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<sup>8</sup> *Anders* briefs take their name from a 1967 U.S. Supreme Court decision, *Anders v. California*, which held in part that a defender who seeks to be relieved from an allegedly frivolous appeal must outline the facts and analyze the legal issues of the case for the court. An issues brief is filed in what a lawyer determines is a meritorious appeal, and involves thorough legal research of all issues raised and legal argument exceeding that required in a typical *Anders* brief.

For example, if after reading the record in a felony appeal it became clear the case requires an *Anders* brief, the attorney was to thereafter code all work on the case with “26A.”

#### 4.5.7 “Other” Case Type Codes

As mentioned previously, we developed "multiple case-related" case type codes to use for recording time spent on multiple activity occurrences (same or different activities) which are related to more than one adult, juvenile, dependency, mental health or appeals case type, and which cannot be recorded individually due to their short duration (for example, a series of brief telephone calls to clients with various types of cases).

In addition, we had a code for Trial Witness Representation, which was for use when appointed to represent a witness at trial.

#### 4.6 Activity Codes

Along with each Case Type Code entered on the Daily Activity Log, attorneys were required to record an Activity Code corresponding to the work performed, whether it was case-related work or non-case-related work. Activity codes developed for the Log were broken into the following sub-groupings:

- Adult In-Court Case Related Activities;
- Juvenile In-Court Case Related Activities;
- Dependency In-Court Case Related Activities;
- Mental Health In-Court Case Related Activities;
- Appeals In-Court Case Related Activities;
- Out-of-Court Case Related Activities;
- Non-Case Related Activities; and
- Other (Multiple, Short Activities).

Out-of-court case related activities were defined as work performed outside of court by a trial attorney in connection with representing a client in any case type. Out-of-court activities include all case-related work that is not performed in front of a judge. The 14 out-of-court case related activity codes on the time sheet were:

Code 100: Investigation

Code 101: Client Related Contact  
Code 102: Case Preparation  
Code 103: Case Related Administration  
Code 104: Social Services Activity  
Code 105: Legal Research  
Code 106: Conference With Supervisor/Colleague  
Code 107: Conference with County Attorney/Attorney General, Adverse Attorneys,  
                    Probation/Parole Officers or Court Personnel  
Code 108: Case Related Supervision  
Code 109: Appeals: Brief Writing  
Code 110: Appeals: Record/Transcript Review  
Code 111: Waiting in Court  
Code 112: Waiting at Jail/Correctional Facility  
Code 113: Case Related Travel

In the training sessions and in the Instructions Manual accompanying the Daily Activity Log, specific definitions and distinctions among these activities were provided. For instance, client related contact was defined as:

Includes any in-person, telephone or written discussions with the client, client's friends or the client's family. Includes contact in office, jail, detention center, court holding pen, correctional facility, home, hospital or other placement. Includes all conferences with the client prior to the beginning of hearings or trial. Includes all letters to clients.

Attorneys were instructed to use codes 111 and 112 to record time spent waiting in court or at the jail or correctional facility when additional work was not performed, also referred to as “non-productive waiting time”. If an attorney performed other activities while waiting, the attorney was to code this as “productive waiting time” by using a “W” following the appropriate activity code to indicate that the activity was performed while waiting. For example, if an attorney spoke to a client while waiting for a hearing, this would be coded as “101 W” (client contact, waiting).

While there was one set of out-of-court case related activity codes to be used by all attorneys participating in the time study, regardless of the type of cases they handled, the in-court activity codes were tailored for the various case types.

The Adult In-Court Case-Related Activity codes were:

Code 41: Initial Appearance/ Arraignment/Bench Warrant

Code 42: Preliminary Hearing

Code 43: Release Hearing

Code 44: Pretrial Conference

Code 45: Rule 11 - Competency

Code 46: Settlement Conference

Code 47: Pretrial Motions/Special Action

Code 48: Change of Plea

Code 49: Continuance Panel

Code 50: Final Management Conference

Code 51: Trial

Code 52: Mitigation/ Sentencing/Restitution

Code 53: Probation Violation Hearing

Code 54: Drug/DUI Court

Code 55: Court Ordered Reviews/ Compliance Hearings

Code 56: Court Coverage

The Juvenile In-court Activity Codes were:

Code 60: Advisory

Code 61: Warrant Hearing

Code 62: Mental Competency

Code 63: Pre-Adjudication

Code 64: Pretrial Motions/Special Action

Code 65: Transfer Hearing

Code 66: Adjudication

Code 67: Disposition

Code 68: Restitution Hearing  
Code 69: Probation Violation Hearing  
Code 70: Detention Review Hearing  
Code 71: Placement Review Hearing  
Code 72: Status Review Hearing  
Code 73: Drug Court

The In-Court Dependency Activity codes were:

Code 74: Hearing/Special Action  
Code 75: Mediation/Preliminary Protective Conference  
Code 76: Trial  
Code 77: Report & Review  
Code 78: Foster Care Review Board  
Code 79: CPS Staffing

The Mental Health In-Court Activity codes were:

Code 80: COE Hearing  
Code 81: Motion/Special Action  
Code 82: COT Hearing/Submission/Review  
Code 83: AR Hearing  
Code 84: JR Hearing  
Code 85: LARC Matter

The Appeals In-Court Activity codes were:

Code 90: Oral Argument  
Code 91: Evidentiary Hearing

#### 4.6.1 Non-Case-Related Activity Codes

All attorneys had codes to choose from to code their work that was not related to individual cases. The appropriate case type code to use with each of these codes was the Non-Case Related code. The Non-Case Related Activity Codes were:

Code 115: Professional Development (CLE)

Code 116: Non-Case Related Admin.

Code 117: Time Away From Work

Code 118: Training/Mentoring

Code 119: Community Service

#### 4.6.2 Multiple, Short Activities

Finally there was one other activity code - Multiple, Short Activities - which was used to record time spent on multiple activities that could not be individually recorded on the Daily Activity Log due to their short duration and quick succession. For example, an attorney might spend a half-hour in the morning performing 15 different activities, none requiring more than three minutes. If those activities corresponded to a number of different activity codes (for example, if they included preparing subpoenas, calling clients, conferring with a supervisor, and completing an investigation request), no single activity code could be used to record all of the activities performed. Therefore, it would be appropriate for the attorney to use the Multiple, Short Activities code to record the entire block of time.

#### 4.7 Disposition Codes

In addition to providing the start and stop times, case type codes and activity codes for all work performed during the day, attorneys in the time study were required to record codes for all dispositions occurring during the 12 week period. The disposition codes were required not to evaluate what types of outcomes were achieved in the sample attorneys' cases, but rather as a measure of the cases closed. For all cases but dependency cases, the Disposition Codes were to be recorded on the Daily Activity Log when the client's case was finalized, for example, upon sentencing in a trial case or when the court's decision was received by the attorney in an appellate case.

Due to the unique nature of dependency work, "dispositions" for dependency cases were recorded differently than adult and juvenile delinquency matters. Dependency cases were tracked using new assignments or filings rather than dispositions. When an attorney was assigned a new dependency case, he or she was to record a disposition code (Code Q) at that time. Similarly, when a petition for severance or guardianship was filed, the attorney would record Code R, Severance

Filed, or Code T, Guardianship Filed, at that time, rather than at the completion of the work relating to the severance or guardianship.

#### 4.7.1 General Disposition Codes

The following general disposition codes applied to criminal and other case types:

- B: Withdrawal
- C: TASC Diversion/Deferred Prosecution
- D: Dismissed
- E: Sentence Following Plea
- F: Trial - Acquitted/Sentenced Following Trial
- G: Guilty Except Insane
- H: Probation Violation: Revoked/Reinstated
- J: Diversion
- K: Other

#### 4.7.2 Special Disposition Codes

These codes were for use by juvenile, dependency, mental health, and appellate attorneys:

##### Juvenile Dispositions

- L. Acquittal at Adjudication/Disposition
- M. Adult transfer
- N. Transfer to Another Jurisdiction

##### Dependency Dispositions

- Q. New Dependency Filed
- R. Severance Filed
- T. Guardianship Filed
- U. Dependency/Severance Appeal: Affirmed/Reversed/Remanded/Modified

##### Appeals Dispositions:

- V. Affirmed/Reversed/Remanded/Modified or Special Action Decision
- W. PCR: Petition Denied/Relief Granted

Mental Health Dispositions

X. Ordered for Treatment/Release from Evaluation/Not Evaluated/Legal Guardian  
Appointed

## **CHAPTER 5**

### **PROCESSING AND ANALYSIS OF THE DATA**

#### **5.1 Processing the Data**

As each timesheet was received by Mr. Newhouse, he reviewed each entry for completeness (attorney identification number, date, missing entries, and errors in recording). Once this was completed, the timesheets were entered into a spreadsheet program tailored for the project. The data entry took a number of weeks in as much as the total entries contained on all of the time sheets turned in for the study was 108,695.

As previously discussed, the total number of attorneys who successfully completed the study was 160. Of this number, 106 came from the public defender, 24 from the legal defender, 17 from the legal advocate, and 13 were individual contract attorneys.

The total number of attorneys who filled out time sheets and were in our regular database at the conclusion of the study was 169. Nine of the attorneys in the original database were eliminated because they did not turn in at least 30 timesheets, and it was determined that 160 attorneys was more than a sufficient sample to make statistical estimates with the data. These 160 attorneys, therefore, became the final database for our calculations and analysis of the work.

During the time period for the study, there were 58 working days (excluding weekends and holidays). For the 160 attorneys, the average number of time sheets turned in that reflected work activity was 50.3. The total number of entries recorded for the 160 attorneys in the final database was 108,695, for an average of 13.5 entries per time sheet.

Because of the large sample of attorneys that completed the study, we are able to analyze the data and provide the average time-per-disposition for a number of case types. However, because of the predominance of Maricopa County Public Defenders in the sample, and the much smaller number of lawyers at OLD, OLA and contract lawyers, it is not possible to compare the data across all of the agencies for case type codes and activities codes. There is sufficient data, however, to develop workload standards based upon average time-per-disposition for the entire operation of the indigent defense program in Maricopa County for a number of significant case types, and the chapters that follow will lay out those data.

The data entry program incorporated an internal verification feature to check for incompatible case types and activity codes, gaps in start and stop time, or multiple case type or activities codes entered on one line. In initial stages of time recording, several errors of this nature were detected. However, as the study progressed, the error rate was reduced considerably. If data was illegible, or if errors occurred which could not be resolved, the attorney was contacted and the error was corrected. If the attorney could not resolve the error, the entire line of data was deleted from the data set.

When all of these procedures were completed, the data was in acceptable raw form. The data showed the aggregate number of hours that were allotted to each of the activities codes under the specific case types as well as multiple case related, adult, juvenile and non-case related time.

## 5.2 Analysis of the Data

Prior to developing standard times for the various case types and activities, we conducted an analysis of the data with respect to their sufficiency for estimation purposes. As described earlier, the study achieved more than adequate samples of attorney days across the entire sample. However, because of the widely varying frequencies with which the different case types and activities occur, we were unable to provide statistically significant data for all of the 40 specific case types. This problem typically occurs and is discussed in detail later in this chapter.

When the daily activity log was finalized with the assistance of the advisory committee of lawyers in Maricopa County and The Spangenberg Group, there turned out to be 40 different case type codes. Thirty-three of these corresponded to specific case types and 6 corresponded to more general case types. In addition, one code, “non-case related,” was to be used when coding time for work that was not related to an individual case.

As explained earlier in the previous chapter, there were 7 individual case type codes for adult felony cases including: potential or actual capital case; all other homicide cases; dangerous crimes against children cases; felonies; DUI cases; and violation of probation. In all there were three case type codes for misdemeanors, and 7 for juvenile cases.

Dependency cases, which are handled very differently than other court-appointed cases in Maricopa County, have 4 separate case type codes. There are also 4 separate case type codes for mental health cases and 8 case type codes for appeals.

Finally, as mentioned previously, we developed “multiple case related” case type codes to use for recording time spent on multiple activity occurrences which are related to one or more adult, juvenile, dependency, mental health or appeals case type and which cannot be recorded individually due to their short duration.

In terms of case activities, we divided them into activities that occur in court, and activities that occur out of court. They are also divided into 8 sub-groupings including non-case related work.

Fifteen codes were developed for out-of-court case related activities and 16 codes for adult in-court case related activities.

We looked at juvenile cases separately and developed 14 in-court activities. An additional 6 in-court activities were developed for dependency cases and 6 for mental health. For appeals we had two in-court activities and, finally, five non-case related activities codes.

The purpose of spending a substantial amount of time with the attorneys in Maricopa County was to be certain that when the time study began there would be a code on the time sheet for every activity that a public defender would undertake for the various case types, case activities, non-case related activities, and time away from work.

Before discussing the results of the study, we want to emphasize once again that it is not possible to compare with any precision the results of the 4 different programs that participated in this time study. Of the 5,109 dispositions recorded during the study, approximately 77 percent were from the Public Defender, nearly 14 percent were from the Legal Defender, almost 5 percent were from the Legal Advocate, and over 3 percent were from OCC attorneys. The dispositions are scattered among the 33 case types, and there are no case categories that have a sufficient number of dispositions for each agency to be compared statistically. Further, the agencies provide different types of representation. Therefore, the concentration in our analysis is on the data for the entire county based upon the sample attorneys that participated.

The first analysis we undertook was to display the total number of hours recorded by all attorneys over the 12-week period. Table 5-1 sets out these data by each of the specific

activity codes, and non-case related activity time. The only time not reported on this table, was time away from work, which was eliminated from the analysis. This time was eliminated from all tables. The total amount of time reported by the 160 attorneys over the 12-week period was 63,272 hours and 36 minutes. Of that figure, 7,140 hours and 8 minutes were determined to be non-case related. This figure is approximately 11.3 percent of all the time recorded in the study.

**Table 5-1 Hours By Activity**

Activity		PD			OLA			OLD			OCC			ALL		
		Hours	% of Category	% of Total	Hours	% of Category	% of Total	Hours	% of Category	% of Total	Hours	% of Category	% of Total	Hours	% of Category	% of Total
In Court	Initial Appearance/ Arraignment/Bench Warrant	160:17	3.6%	0.4%	0:50	0.1%	0.0%	34:54	3.1%	0.4%	0:55	0.1%	0.0%	196:56	3%	0.3%
	Preliminary Hearing	468:40	10.5%	1.1%	4:15	0.4%	0.1%	101:13	8.9%	1.0%	8:59	1.4%	0.2%	583:07	8%	0.9%
	Release Hearing	35:54	0.8%	0.1%	0:45	0.1%	0.0%	8:03	0.7%	0.1%	0:10	0.0%	0.0%	44:52	1%	0.1%
	Pretrial Conference	242:25	5.4%	0.6%	55:33	5.8%	0.7%	58:29	5.1%	0.6%	6:28	1.0%	0.2%	362:55	5%	0.6%
	Rule 11 – Competency	19:25	0.4%	0.0%	4:55	0.5%	0.1%	3:38	0.3%	0.0%	2:35	0.4%	0.1%	30:33	0%	0.0%
	Settlement Conference	121:05	2.7%	0.3%	41:41	4.4%	0.5%	18:25	1.6%	0.2%	1:30	0.2%	0.0%	182:41	3%	0.3%
	Pretrial Motions/Special Action	122:32	2.7%	0.3%	75:41	7.9%	0.9%	16:30	1.5%	0.2%	2:59	0.5%	0.1%	217:42	3%	0.3%
	Change of Plea	479:52	10.7%	1.2%	39:18	4.1%	0.5%	82:47	7.3%	0.8%	6:06	1.0%	0.1%	608:03	8%	1.0%
	Continuance Panel	12:54	0.3%	0.0%	8:25	0.9%	0.1%	4:42	0.4%	0.0%	0:10	0.0%	0.0%	26:11	0%	0.0%
	Final Management Conference	56:48	1.3%	0.1%	14:00	1.5%	0.2%	11:16	1.0%	0.1%	0:10	0.0%	0.0%	82:14	1%	0.1%
	Trial	544:29	12.2%	1.3%	236:40	24.7%	2.9%	139:27	12.3%	1.4%	0:00	0.0%	0.0%	920:36	13%	1.5%
	Mitigation/ Sentencing/Restitution	644:08	14.4%	1.6%	111:39	11.7%	1.3%	104:00	9.1%	1.1%	11:19	1.8%	0.3%	871:06	12%	1.4%
	Probation Violation Hearing	261:08	5.8%	0.6%	0:35	0.1%	0.0%	1:21	0.1%	0.0%	0:00	0.0%	0.0%	263:04	4%	0.4%
	Drug/DUI Court	55:30	1.2%	0.1%	0:20	0.0%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	55:50	1%	0.1%
	Court Ordered Reviews/ Compliance Hearings	5:36	0.1%	0.0%	3:25	0.4%	0.0%	2:40	0.2%	0.0%	0:00	0.0%	0.0%	11:41	0%	0.0%
	Court Coverage	324:59	7.3%	0.8%	2:04	0.2%	0.0%	7:30	0.7%	0.1%	0:00	0.0%	0.0%	334:33	5%	0.5%
	Advisory	199:47	4.5%	0.5%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	24:05	3.8%	0.6%	223:52	3%	0.4%
	Warrant Hearing	13:39	0.3%	0.0%	0:00	0.0%	0.0%	0:10	0.0%	0.0%	0:50	0.1%	0.0%	14:39	0%	0.0%
	Mental Competency	30:52	0.7%	0.1%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	6:50	1.1%	0.2%	37:42	1%	0.1%
	Pre-Adjudication	102:25	2.3%	0.2%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	4:35	0.7%	0.1%	107:00	1%	0.2%
	Pretrial Motions/Special Action	4:55	0.1%	0.0%	0:00	0.0%	0.0%	1:45	0.2%	0.0%	0:30	0.1%	0.0%	7:10	0%	0.0%
	Transfer Hearing	7:37	0.2%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	1:00	0.2%	0.0%	8:37	0%	0.0%
	Adjudication	144:28	3.2%	0.4%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	16:50	2.6%	0.4%	161:18	2%	0.3%
	Disposition	148:52	3.3%	0.4%	0:00	0.0%	0.0%	0:09	0.0%	0.0%	27:30	4.3%	0.7%	176:31	2%	0.3%
	Restitution Hearing	9:14	0.2%	0.0%	0:00	0.0%	0.0%	0:20	0.0%	0.0%	1:05	0.2%	0.0%	10:39	0%	0.0%
	Probation Violation Hearing	7:27	0.2%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	2:25	0.4%	0.1%	9:52	0%	0.0%
	Detention Review Hearing	8:34	0.2%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	0:15	0.0%	0.0%	8:49	0%	0.0%
	Placement Review Hearing	11:14	0.3%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	2:30	0.4%	0.1%	13:44	0%	0.0%
	Status Review Hearing	33:26	0.7%	0.1%	0:00	0.0%	0.0%	0:30	0.0%	0.0%	5:55	0.9%	0.1%	39:51	1%	0.1%
	Drug Court	17:04	0.4%	0.0%	0:00	0.0%	0.0%	0:39	0.1%	0.0%	20:00	3.1%	0.5%	37:43	1%	0.1%
	Hearing/Special Action	0:00	0.0%	0.0%	123:59	12.9%	1.5%	172:22	15.2%	1.8%	165:28	25.9%	4.0%	461:49	6%	0.7%
	Mediation/Preliminary Protective Conference	0:00	0.0%	0.0%	112:49	11.8%	1.4%	152:45	13.4%	1.6%	91:55	14.4%	2.2%	357:29	5%	0.6%
	Trial	1:22	0.0%	0.0%	34:49	3.6%	0.4%	152:44	13.4%	1.6%	121:00	18.9%	2.9%	309:55	4%	0.5%
	Report & Review	0:00	0.0%	0.0%	34:17	3.6%	0.4%	47:32	4.2%	0.5%	64:30	10.1%	1.6%	146:19	2%	0.2%
	Foster Care Review Board	0:00	0.0%	0.0%	6:25	0.7%	0.1%	0:00	0.0%	0.0%	9:55	1.6%	0.2%	16:20	0%	0.0%
	CPS Staffing	0:00	0.0%	0.0%	31:05	3.2%	0.4%	13:03	1.1%	0.1%	30:30	4.8%	0.7%	74:38	1%	0.1%
	COE Hearing	9:30	0.2%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	9:30	0%	0.0%
	COT Hearing/Submission/ Review	161:05	3.6%	0.4%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	161:05	2%	0.3%
	Oral Argument	2:15	0.1%	0.0%	0:50	0.1%	0.0%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	3:05	0%	0.0%
	Evidentiary Hearing	0:35	0.0%	0.0%	13:07	1.4%	0.2%	0:00	0.0%	0.0%	0:00	0.0%	0.0%	13:42	0%	0.0%
In Court Total		4470:03	100.0%	10.9%	957:27	100.0%	11.5%	1136:54	100.0%	11.6%	638:59	100.0%	15.4%	7203:23	100%	11.4%

**Table 5-1 Hours By Activity**

		PD			OLA			OLD			OCC			ALL		
Out of Court	Investigation	924:51	2.9%	2.3%	130:04	2.0%	1.6%	297:42	3.9%	3.0%	84:58	2.6%	2.1%	1437:35	3%	2.3%
	Client Related Contact	5052:41	16.0%	12.3%	922:18	14.1%	11.1%	1149:41	15.0%	11.7%	459:13	14.2%	11.1%	7583:53	15%	12.0%
	Case Preparation	10533:25	33.4%	25.7%	2487:44	37.9%	30.0%	3006:28	39.3%	30.6%	1135:59	35.2%	27.4%	17163:36	35%	27.1%
	Case Related Administration	2332:05	7.4%	5.7%	248:30	3.8%	3.0%	607:19	7.9%	6.2%	450:45	14.0%	10.9%	3638:39	7%	5.8%
	Social Services Activity	128:13	0.4%	0.3%	31:44	0.5%	0.4%	17:03	0.2%	0.2%	8:10	0.3%	0.2%	185:10	0%	0.3%
	Legal Research	1534:49	4.9%	3.7%	320:59	4.9%	3.9%	383:28	5.0%	3.9%	56:05	1.7%	1.4%	2295:21	5%	3.6%
	Conference with Supervisor/Colleague	1622:42	5.2%	4.0%	203:32	3.1%	2.5%	357:22	4.7%	3.6%	80:57	2.5%	2.0%	2264:33	5%	3.6%
	Conf. with CA/AG, Prob./Parole Officer, Adverse Attorneys or Court Personnel	1078:23	3.4%	2.6%	301:40	4.6%	3.6%	298:33	3.9%	3.0%	175:00	5.4%	4.2%	1853:36	4%	2.9%
	Case-Related Supervision	792:57	2.5%	1.9%	79:56	1.2%	1.0%	71:45	0.9%	0.7%	0:55	0.0%	0.0%	945:33	2%	1.5%
	Appeals: Brief writing	1461:05	4.6%	3.6%	297:31	4.5%	3.6%	37:30	0.5%	0.4%	40:44	1.3%	1.0%	1836:50	4%	2.9%
	Appeals: Record/Transcript Review	2179:41	6.9%	5.3%	436:45	6.7%	5.3%	91:23	1.2%	0.9%	27:48	0.9%	0.7%	2735:37	6%	4.3%
	Waiting in Court	1884:41	6.0%	4.6%	352:06	5.4%	4.2%	507:00	6.6%	5.2%	167:54	5.2%	4.1%	2911:41	6%	4.6%
	Waiting at Jail/Correctional Facility	223:47	0.7%	0.5%	59:07	0.9%	0.7%	87:46	1.1%	0.9%	10:58	0.3%	0.3%	381:38	1%	0.6%
	Case Related Travel	1748:12	5.6%	4.3%	686:21	10.5%	8.3%	735:55	9.6%	7.5%	524:55	16.3%	12.7%	3695:23	8%	5.8%
<b>Out of Court Total</b>		<b>31497:32</b>	<b>100.0%</b>	<b>76.8%</b>	<b>6558:17</b>	<b>100.0%</b>	<b>79.0%</b>	<b>7648:55</b>	<b>100.0%</b>	<b>77.9%</b>	<b>3224:21</b>	<b>100.0%</b>	<b>77.9%</b>	<b>48929:05</b>	<b>100%</b>	<b>77.3%</b>
Non Case Related	Professional Development (CLE)	1379:35	27.3%	3.4%	225:51	28.9%	2.7%	355:25	34.3%	3.6%	80:00	29.0%	1.9%	2040:51	29%	3.2%
	Non-Case Related Admin.	1546:09	30.6%	3.8%	185:40	23.7%	2.2%	250:42	24.2%	2.6%	89:46	32.6%	2.2%	2072:17	29%	3.3%
	Training/Mentoring	349:35	6.9%	0.9%	13:41	1.7%	0.2%	57:39	5.6%	0.6%	28:45	10.4%	0.7%	449:40	6%	0.7%
	Community Service	174:45	3.5%	0.4%	32:20	4.1%	0.4%	126:36	12.2%	1.3%	29:30	10.7%	0.7%	363:11	5%	0.6%
	Multiple, Short Activities	1595:01	31.6%	3.9%	325:00	41.5%	3.9%	246:32	23.8%	2.5%	47:36	17.3%	1.2%	2214:09	31%	3.5%
<b>Non Case Related Total</b>		<b>5045:05</b>	<b>100.0%</b>	<b>12.3%</b>	<b>782:32</b>	<b>100.0%</b>	<b>9.4%</b>	<b>1036:54</b>	<b>100.0%</b>	<b>10.6%</b>	<b>275:37</b>	<b>100.0%</b>	<b>6.7%</b>	<b>7140:08</b>	<b>100%</b>	<b>11.3%</b>
<b>Grand Total</b>		<b>41012:40</b>		<b>100.0%</b>	<b>8298:16</b>		<b>100.0%</b>	<b>9822:43</b>		<b>100.0%</b>	<b>4138:57</b>		<b>100.0%</b>	<b>63272:36</b>		<b>100.0%</b>

Table 5-1 sets out all of the activities, in-court and out-of-court, for all of the case types handled during the time study. It also records the five categories of non-case related codes, which are professional development, non-case related administration, training and mentoring, community service, and multiple short activities. Finally, it displays the data for the non-case related total time and the grand total for all attorneys. Table 5-1 displays data for each of the four agencies that participated in the study: the Public Defender, the Legal Advocate, the Legal Defender, and the Office of Contract Counsel. The last column of the table (“ALL”) provides all hours reported during the study period for each activity.

Table 5-1 presents, for each agency, the total number of hours reported for all in-court and out-of-court activities followed by the percentage of time that each individual activity consumed within the in-court activity, out-of-court activity, and non-case related categories. In other words, the table is designed so that there is a separate column for each agency, with three sub-totals for in-court time, out-of-court time and non-case related time. Within each overall agency column are three sets of data reflected by the headings at the top: hours, percent of category, and percent of total hours. The middle column, the percent of category column, displays the percentage of time that the various activities consumed within the three categories of activities (e.g., among public defender office attorneys, 10.5 % of all of the time recorded for in-court activities was for preliminary hearings). The third column (% of Total) displays the percentage of time for each activity based upon the total aggregate hours for *all* activities (in-court, out-of-court and non-case related) for each agency (e.g., the time recorded for preliminary hearings by attorneys on the public defender office represented 1.1% of all time recorded by these attorneys). The last column on Table 5-1 (the “ALL” column) provides information on every entry for the entire study and the percentage of that time to the total in-court activity, the total out-of-court activity, and the total non-case related activity. Out of the total time recorded by attorneys during the study period (63,272 hours), 65 percent can be attributed to Public Defenders, 13 percent to Legal Advocates, 16 percent to Legal Defenders, and approximately 6 percent to contract attorneys.

A further analysis of Table 5-1 shows that of all the time recorded in the 12-week period, 7,203 hours were spent in court, which is 11.4 percent of the total time recorded. The out-of-court activity for all agencies consumed 48,929 hours, or 77.3 percent of all the time recorded, and the total non-case related time, 7,140 hours, consumed 11.3 percent of all of the time

recorded in the study. These figures are within a consistent range of the other public defender studies that we have conducted over the years.

When reviewing the time spent by each of the agencies in court, we have determined that the public defender office overall spent approximately 10.9 percent of the time in court, legal advocate office 11.5 percent, legal defender office 11.6 percent, and the contract attorneys 15.4 percent.

When looking at the percentage of the total out-of-court time spent by each of the agencies during the course of the study, the data shows that the Public Defender overall spent about 77 percent of their work on out-of-court activities, Legal Advocate 79 percent, Legal Defender 78 percent, and the contract program approximately 78 percent. It is obvious that each of the agencies spent over three-quarters of all of their case-related time working on case activities out of court.

Table 5-1 displays the 40 separate in-court codes that were developed for the study. It is important to note that the data shows that 6 of the 40 codes make up almost 53 percent of the time spent on the 40 in-court activities. The largest amount of time overall spent in-court was 920 hours for trial, or approximately 13 percent of the total court hours. The activity code of Mitigation/Sentencing/Restitution added up to 871 hours, or approximately 12 percent of the total in-court hours. Change of Plea represented the third largest amount of time recorded for in-court activities at 8 percent. Preliminary hearings, at 583 hours, was the fourth most time consuming in-court activity, accounting for about 8 percent of all in-court time. Hearings/Special Action constituted 461 hours, or approximately 6 percent of the total time, and pretrial conferences, at 362 hours, represented slightly more than 5 percent of the total time devoted to in-court activities.

Attorneys spent a total of 7,203 hours of their time in court during the study. However, only 18 of the 40 in-court activities codes accounted for greater than one percent of that time. The remaining 22 in-court activities represented less than one percent of the total hours for in-court work. This in part reflects TSG's goal to prepare a time sheet that would contain a code for every type of activity that would be performed during the time study, no matter how infrequently. It is not unusual to see this kind of a breakout by in-court activity. The following 22 in-court activities had less than one percent of the total in-court time:

#### Adult In-Court

- Release hearing
- Rule 11 - Competency
- Continuance Panel
- Final Management Conference
- Drug/DUI Court
- Court Ordered Reviews/ Compliance Hearings

#### Juvenile In-Court

- Warrant Hearing
- Mental Competency
- Pre-Adjudication
- Pretrial Motions/ Special Action
- Transfer Hearing
- Restitution Hearing
- Probation Violation Hearing
- Detention Review Hearing
- Placement Review Hearing
- Status Review Hearing
- Drug Court

#### Dependency In-Court

- Foster Care Review Board
- CPS Staffing

#### Mental Health In-Court

- COE Hearing

#### Appeals In-Court

- Oral Argument
- Evidentiary Hearing

In analyzing the individual out-of-court case related codes, the data shows that almost 35 percent of all the time spent out-of-court was in case preparation, and 15 percent of the out-of-court time in client related contact. This combination of 50 percent of the total amount of out-of-court time devoted to case preparation and client related contact is similar to the results in other time studies that we have completed.

When analyzing the time attorneys spent on professional developments, training, mentoring, and community service, we find that these activities amounted to only about four percent of all the time spent during this study.

Codes were developed for waiting time. Activity codes 111 and 112 were used to record time spent waiting in court or at the jail or a correctional facility, also referred to as non-

productive waiting time.<sup>9</sup> The term “non-productive” does not suggest that the attorneys were not working, as they were required to be either in court or at the jail or correctional facility to provide direct representation of a client. In addition to the codes for non-productive waiting time, a code “W” was to be added to an activity code when an attorney was waiting in court or at the jail while performing other activities, also referred to as productive waiting time. This methodology allowed us to analyze how much time attorneys spent waiting in court or at a jail or correctional facility, and also allowed us to estimate how that time is spent.

All waiting time (productive and non-productive) comprised 8.5 percent of all out-of-court case-related time. Slightly more than 78 percent of the waiting time was non-productive, and nearly 22 percent was productive. In addition, attorneys recorded just under 30 minutes of productive waiting time spent on non-case related matters including professional development, non-case-related administration and multiple, short activities.

It should be noted, however, that since there was no independent method to verify this waiting time data, we provide the data for informational purposes only.

In addition to waiting time, a code was developed for case-related travel. Case-related travel comprised 7.5 percent of all out-of-court case-related time. Together, waiting time and travel time comprised almost 16 percent of all of the out-of-court case-related time in the study.

### 5.3 Total Hours By Case Type

Table 5-2a sets out the time data for all 160 attorneys during the 12 week period of the study by specific case type. As previously indicated, in order to maximize the information that could be collected, there were multiple categories on a time sheet for adult cases, juvenile delinquencies, dependencies, mental health, and appeals. Table 5-2b provides the same data as a percentage of time by case type.

Tables 5-2a and 5-2b do not include the multiple case related time as distributed to the different case categories, but display it separately at the end of each table. The multiple case related time distributed appears later in Table 5-3.

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<sup>9</sup> All waiting time, whether it was spent at court waiting for a case to be called, or at a jail or correctional facility waiting to see a client, was considered to be “out-of-court” activity, even if it occurred at the courthouse. The only activities considered to be “in-court” activities were those that occur between the time when the case had been called into the record and when the matter was completed. In other words, in-court activity occurs within the so-called “gavel to gavel” period.



**Table 5-2a  
Total Hours by Case Type**

		PD	OLA	OLD	OCC	All
Adult	Potential or Actual Capital Case	1309:35	481:45	901:21	87:24	2780:05
	All Other Homicide	1009:21	379:07	1301:31	56:08	2746:07
	Dangerous Crimes Against Children	1339:08	384:44	53:28	1:21	1778:41
	Class 2-3 Felony	7207:06	1814:08	1339:38	114:08	10475:00
	DUI	1044:53	4:45	2:47	0:20	1052:45
	Class 4-6 Felony	7389:45	371:53	1788:20	90:44	9640:42
	<b>Total Felony</b>	<b>19299:48</b>	<b>3436:22</b>	<b>5387:05</b>	<b>350:05</b>	<b>28473:20</b>
	Class 1	124:27	11:17	17:42	3:08	156:34
	Class 2-3	9:05	0:00	0:31	1:00	10:36
	DUI	191:10	3:15	2:08	6:35	203:08
	<b>Total Misdemeanor</b>	<b>324:42</b>	<b>14:32</b>	<b>20:21</b>	<b>10:43</b>	<b>370:18</b>
	Violation of Probation (w/o new charges)	1372:40	3:50	6:30	3:00	1386:00
<b>Adult Total</b>		<b>20997:10</b>	<b>3454:44</b>	<b>5413:56</b>	<b>363:48</b>	<b>30229:38</b>
Juvenile	Juvenile Felony	1884:50	0:00	0:55	263:13	2148:58
	Juvenile Misdemeanor	1321:19	0:55	0:00	47:21	1369:35
	Juvenile DUI	115:59	0:20	0:00	0:30	116:49
	Incorrigible	21:03	2:00	2:20	0:00	25:23
	Violation Of Probation	783:29	2:10	0:00	13:50	799:29
	Sex Crimes	173:51	0:00	0:00	0:00	173:51
	Drug	170:55	0:00	1:20	20:25	192:40
<b>Juvenile Total</b>		<b>4471:26</b>	<b>5:25</b>	<b>4:35</b>	<b>345:19</b>	<b>4826:45</b>
Dependency	Dependency	1:00	2284:07	1775:52	1731:01	5792:00
	GAL	0:00	0:00	0:00	50:15	50:15
	Severance	0:00	135:12	509:12	274:37	919:01
	Guardianship	0:00	28:03	74:07	97:27	199:37
	Dependency Appeal	0:00	50:36	140:33	23:25	214:34
<b>Dependency Total</b>		<b>1:00</b>	<b>2497:58</b>	<b>2499:44</b>	<b>2176:45</b>	<b>7175:27</b>
Mental Health	Court Ordered Evaluation	1249:27	0:45	0:00	0:00	1250:12
	Annual Review	7:37	0:00	0:00	0:00	7:37
	Judicial Review	16:05	0:05	0:30	1:00	17:40
	LARC Matter	3:22	1:40	0:00	0:00	5:02
<b>Mental Health Total</b>		<b>1276:31</b>	<b>2:30</b>	<b>0:30</b>	<b>1:00</b>	<b>1280:31</b>
Appellate	Felony Appeal	3709:20	727:20	1:02	0:30	4438:12
	Misdemeanor Appeal	0:07	0:15	0:00	0:00	0:22
	Juvenile Appeal	409:08	0:00	0:00	75:43	484:51
	Plea PCR	554:12	553:16	7:07	0:00	1114:35
	Trial PCR	237:41	25:20	0:45	0:00	263:46
	Special Action	36:36	0:25	0:00	0:00	37:01
	Petition for Review	40:44	1:10	0:00	0:00	41:54
	Mental Health Appeal	3:13	0:20	0:00	0:00	3:33
<b>Appellate Total</b>		<b>4991:01</b>	<b>1308:06</b>	<b>8:54</b>	<b>76:13</b>	<b>6384:14</b>
Multiple Case Related	Multiple Case Related – Adult	4087:48	317:46	799:22	166:50	5371:46
	Multiple Case Related – Juvenile	988:50	6:00	1:07	68:53	1064:50
	Multiple Case Related – Dependency	4:59	194:05	236:57	681:50	1117:51
	Multiple Case Related – Mental Health	60:55	0:05	1:50	0:00	62:50
	Multiple Case Related – Appeals	248:43	11:41	0:26	6:44	267:34
<b>Multiple Case Related Total</b>		<b>5391:15</b>	<b>529:37</b>	<b>1039:42</b>	<b>924:17</b>	<b>7884:51</b>
Trial Witness Representation		12:27	1:10	6:21	0:42	20:40
Non- Case Related		3871:50	498:46	849:01	251:23	5471:00
<b>Grand Total</b>		<b>41012:40</b>	<b>8298:16</b>	<b>9822:43</b>	<b>4138:57</b>	<b>63272:36</b>

**Table 5-2b**  
**Percent of Time by Case Type**

Case Type		PD		OLA		OLD		CONTRACT		ALL	
		Category	Percent of Total	Category	Percent of Total	Category	Percent of Total	Category	Percent of Total	Category	Percent of Total
Adult	Potential or Actual Capital Case	6.2%	3.2%	13.9%	5.8%	16.6%	9.2%	24.0%	2.1%	9.2%	4.4%
	All Other Homicide	4.8%	2.5%	11.0%	4.6%	24.0%	13.3%	15.4%	1.4%	9.1%	4.3%
	Dangerous Crimes Against Children	6.4%	3.3%	11.1%	4.6%	1.0%	0.5%	0.4%	0.0%	5.9%	2.8%
	Class 2-3 Felony	34.3%	17.6%	52.5%	21.9%	24.7%	13.6%	31.4%	2.8%	34.7%	16.6%
	DUI	5.0%	2.5%	0.1%	0.1%	0.1%	0.0%	0.1%	0.0%	3.5%	1.7%
	Class 4-6 Felony	35.2%	18.0%	10.8%	4.5%	33.0%	18.2%	24.9%	2.2%	31.9%	15.2%
	<b>All Felonies</b>	<b>91.9%</b>	<b>47.1%</b>	<b>99.5%</b>	<b>41.4%</b>	<b>99.5%</b>	<b>54.8%</b>	<b>96.2%</b>	<b>8.5%</b>	<b>94.2%</b>	<b>45.0%</b>
	Class 1	0.6%	0.3%	0.3%	0.1%	0.3%	0.2%	0.9%	0.1%	0.5%	0.2%
	Class 2-3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%
	DUI	0.9%	0.5%	0.1%	0.0%	0.0%	0.0%	1.8%	0.2%	0.7%	0.3%
	<b>All Misdemeanors</b>	<b>1.5%</b>	<b>0.8%</b>	<b>0.4%</b>	<b>0.2%</b>	<b>0.4%</b>	<b>0.2%</b>	<b>2.9%</b>	<b>0.3%</b>	<b>1.2%</b>	<b>0.6%</b>
	Violation of Probation (w/o new charges)	6.5%	3.3%	0.1%	0.0%	0.1%	0.1%	0.8%	0.1%	4.6%	2.2%
<b>Adult Total</b>		<b>100.0%</b>	<b>51.2%</b>	<b>100.0%</b>	<b>41.6%</b>	<b>100.0%</b>	<b>55.1%</b>	<b>100.0%</b>	<b>8.8%</b>	<b>100.0%</b>	<b>47.8%</b>
Juvenile	Juvenile Felony	42.2%	4.6%	0.0%	0.0%	20.0%	0.0%	76.2%	6.3%	44.5%	3.4%
	Juvenile Misdemeanor	29.6%	3.2%	16.9%	0.0%	0.0%	0.0%	13.7%	1.1%	28.4%	2.2%
	Juvenile DUI	2.6%	0.3%	6.2%	0.0%	0.0%	0.0%	0.1%	0.0%	2.4%	0.2%
	Incorrigible	0.5%	0.1%	36.9%	0.0%	50.9%	0.0%	0.0%	0.0%	0.5%	0.0%
	Violation Of Probation	17.5%	1.9%	40.0%	0.0%	0.0%	0.0%	4.0%	0.3%	16.6%	1.3%
	Sex Crimes	3.9%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	3.6%	0.3%
	Drug	3.8%	0.4%	0.0%	0.0%	29.1%	0.0%	5.9%	0.5%	4.0%	0.3%
<b>Juvenile Total</b>		<b>100.0%</b>	<b>10.9%</b>	<b>100.0%</b>	<b>0.1%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>8.3%</b>	<b>100.0%</b>	<b>7.6%</b>
Dependency	Dependency	100.0%	0.0%	91.4%	27.5%	71.0%	18.1%	79.5%	41.8%	80.7%	9.2%
	GAL	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.3%	1.2%	0.7%	0.1%
	Severance	0.0%	0.0%	5.4%	1.6%	20.4%	5.2%	12.6%	6.6%	12.8%	1.5%
	Guardianship	0.0%	0.0%	1.1%	0.3%	3.0%	0.8%	4.5%	2.4%	2.8%	0.3%
	Dependency Appeal	0.0%	0.0%	2.0%	0.6%	5.6%	1.4%	1.1%	0.6%	3.0%	0.3%
<b>Dependency Total</b>		<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>30.1%</b>	<b>100.0%</b>	<b>25.4%</b>	<b>100.0%</b>	<b>52.6%</b>	<b>100.0%</b>	<b>11.3%</b>
Mental Health	Court Ordered Evaluation	97.9%	3.0%	30.0%	0.0%	0.0%	0.0%	0.0%	0.0%	97.6%	2.0%
	Annual Review	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.6%	0.0%
	Judicial Review	1.3%	0.0%	3.3%	0.0%	100.0%	0.0%	100.0%	0.0%	1.4%	0.0%
	LARC Matter	0.3%	0.0%	66.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%	0.0%
<b>Mental Health Total</b>		<b>100.0%</b>	<b>3.1%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>2.0%</b>
Appellate	Felony Appeal	74.3%	9.0%	55.6%	8.8%	11.6%	0.0%	0.7%	0.0%	69.5%	7.0%
	Misdemeanor Appeal	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	Juvenile Appeal	8.2%	1.0%	0.0%	0.0%	0.0%	0.0%	99.3%	1.8%	7.6%	0.8%
	Plea PCR	11.1%	1.4%	42.3%	6.7%	80.0%	0.1%	0.0%	0.0%	17.5%	1.8%
	Trial PCR	4.8%	0.6%	1.9%	0.3%	8.4%	0.0%	0.0%	0.0%	4.1%	0.4%
	Special Action	0.7%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.6%	0.1%
	Petition for Review	0.8%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%	0.1%
	Mental Health Appeal	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
<b>Appellate Total</b>		<b>100.0%</b>	<b>12.2%</b>	<b>100.0%</b>	<b>15.8%</b>	<b>100.0%</b>	<b>0.1%</b>	<b>100.0%</b>	<b>1.8%</b>	<b>100.0%</b>	<b>10.1%</b>
Multiple Case Related	Adult	0.0%	10.0%	0.0%	3.8%	0.0%	8.1%	0.0%	4.0%	0.0%	8.5%
	Juvenile	0.0%	2.4%	0.0%	0.1%	0.0%	0.0%	0.0%	1.7%	0.0%	1.7%
	Dependency	0.0%	0.0%	0.0%	2.3%	0.0%	2.4%	0.0%	16.5%	0.0%	1.8%
	Mental Health	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
	Appeals	0.0%	0.6%	0.0%	0.1%	0.0%	0.0%	0.0%	0.2%	0.0%	0.4%
Multiple Case Related Total		0.0%	13.1%	0.0%	6.4%	0.0%	10.6%	0.0%	22.3%	0.0%	12.5%
Trial Witness Representation		0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%
Non- Case Related		0.0%	9.4%	0.0%	6.0%	0.0%	8.6%	0.0%	6.1%	0.0%	8.6%
<b>Grand Total</b>		<b>0.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>100.0%</b>

Among the 9 basic categories of cases, which include multiple-case-related and non-case related time, 47 percent of all recorded time was for adult cases (felony and misdemeanor). The second largest percentage of time recorded was 12.5 percent, for multiple case related.

Interestingly, the third highest percentage of hours recorded was 11.3 percent for dependency cases, while juvenile delinquency was 7.6 percent. Appeals amounted to 10.1 percent of all time, probation violations 2.2 percent, and misdemeanors, less than one percent. Non-case related work was 8.6 percent of all the recorded time.

An examination of Table 5-2a and Table 5-2b clearly shows the division of cases established by the county among the four agencies. For example, both OLA and OLD did virtually no work on juvenile delinquency or mental health cases. The Public Defender is the only agency with juvenile delinquency and mental health divisions. The Public Defender did almost 99 percent of all the mental health work across the four agencies. Furthermore, OLD did virtually no appeals while OLA, which has several appellate attorneys, recorded a large number of hours for PCR cases. The Public Defender did no dependency work, but was involved in all other case type representation.

As mentioned previously, when looking at the total number of hours reported for the entire study, Public Defenders recorded 65 percent, Legal Advocates 13 percent, Legal Defender 16 percent, and the contractors approximately 6 percent. Caution should be exercised, however, in looking at the true effects of the contractor work since so few contractors participated in the study.

#### 5.4 Multiple Case Related Time

An analysis of Table 5-2a on the total hours by case type discloses that out of the total number of hours recorded by the attorneys during the study period, 7,884 hours were recorded as multiple case related case type codes, subdivided by adult, juvenile, dependency, mental health, and appeals. We have discussed earlier in the report the need to include multiple case related case type codes to enable attorneys to record multiple activities of short duration that are related to more than one of the specific case type codes. For example, an attorney who provides adult criminal representation may spend 30 minutes at the end of the day making numerous telephone calls to clients, family members of clients, assistant prosecutors, etc. All of these calls are of short duration and involve different adult felony case types. In such a scenario it would be overly burdensome and difficult to attribute each call, some of which may last only a couple of minutes or less, to a specific case type. Therefore, during the study, the attorneys were instructed

to use the various multiple case related codes. In the scenario discussed, the attorney would use the multiple case related – adult case type code.

Table 5-2b discloses that approximately 12.5 percent of all the time that was billed on the study by the attorneys was billed to multiple case related activities. When removing the non-case related time of 5,471 hours, the multiple case related activities consumed 13.6 percent of all of the time billed by the attorneys.

As with the other case type codes, over two-thirds of the multiple case related time was recorded for adult case types (68 percent). Juvenile delinquency consumed 13.5 percent, dependencies 14.2 percent, mental health approximately one percent, and appeals slightly more than three percent.

In order to develop the average time for dispositions among the various case types, it was necessary to distribute the multiple case related time for each of the five categories into the total hours recorded for each of the five case-type categories. Table 5-3 shows the total hours by case type with the multiple case type time distributed in the five major case-type categories.

**Table 5-3**  
**Total Time with Multiple Case Related Time Distributed**

<b>Case Type</b>		<b>PD</b>	<b>OLA</b>	<b>OLD</b>	<b>OCC</b>	<b>ALL</b>
Adult	Potential or Actual Capital Case	1564:32	558:05	951:14	127:28	<b>3274:08</b>
	All Other Homicide	1205:51	428:08	1339:56	81:52	<b>3234:05</b>
	Dangerous Crimes Against Children	1599:50	385:54	104:26	1:58	<b>2094:45</b>
	Class 2-3 Felony	8610:12	1913:49	1614:00	166:28	<b>12336:23</b>
	DUI	1248:18	5:02	42:33	0:29	<b>1239:49</b>
	Class 4-6 Felony	8828:24	451:08	2069:37	132:20	<b>11353:48</b>
	<b>Total Felony</b>	<b>23057:09</b>	<b>3742:09</b>	<b>6121:49</b>	<b>510:37</b>	<b>33533:00</b>
	Class 1	148:40	14:01	22:26	4:34	<b>184:23</b>
	Class 2-3	10:51	0:52	0:51	1:27	<b>12:29</b>
	DUI	228:23	9:00	9:24	9:36	<b>239:13</b>
	<b>Total Misdemeanor</b>	<b>387:54</b>	<b>23:53</b>	<b>32:42</b>	<b>15:37</b>	<b>436:06</b>
	Violation of Probation (without new charges)	1639:54	6:27	58:45	4:22	<b>1632:17</b>
<b>Adult Total</b>		<b>25084:58</b>	<b>3772:30</b>	<b>6213:18</b>	<b>530:38</b>	<b>35601:24</b>
Juvenile	Juvenile Felony	2301:39	4:34	1:23	315:11	<b>2622:29</b>
	Juvenile Misdemeanor	1613:31	1:44	0:19	56:48	<b>1671:45</b>
	Juvenile DUI	141:37	0:20	0:01	0:36	<b>142:35</b>
	Incorrigible	25:42	2:00	2:20	0:00	<b>30:59</b>
	Violation Of Probation	956:44	2:24	0:11	16:35	<b>975:52</b>
	Sex Crimes	212:17	0:00	0:02	0:00	<b>212:12</b>
	Drug	208:42	0:21	1:22	24:29	<b>235:10</b>
<b>Juvenile Total</b>		<b>5460:16</b>	<b>11:25</b>	<b>5:42</b>	<b>413:42</b>	<b>5891:05</b>
Dependency	Dependency	5:59	2438:27	2012:49	2273:13	<b>6694:19</b>
	GAL	0:00	4:28	0:00	65:59	<b>58:04</b>
	Severance	0:00	159:41	509:12	360:38	<b>1062:11</b>
	Guardianship	0:00	36:44	74:07	127:58	<b>230:42</b>
	Dependency Appeal	0:00	52:41	140:33	30:45	<b>247:59</b>
<b>Dependency Total</b>		<b>5:59</b>	<b>2692:03</b>	<b>2736:41</b>	<b>2858:35</b>	<b>8293:18</b>
Mental Health	Court Ordered Evaluation	1309:04	0:45	1:47	0:00	<b>1311:32</b>
	Annual Review	7:58	0:00	0:00	0:00	<b>7:59</b>
	Judicial Review	16:51	0:10	0:31	1:00	<b>18:32</b>
	LARC Matter	3:31	1:40	0:00	0:00	<b>5:16</b>
<b>Mental Health Total</b>		<b>1337:26</b>	<b>2:35</b>	<b>2:20</b>	<b>1:00</b>	<b>1343:21</b>
Appellate	Felony Appeal	3894:10	727:24	1:21	0:32	<b>4624:12</b>
	Misdemeanor Appeal	0:07	0:15	0:00	0:00	<b>0:22</b>
	Juvenile Appeal	429:31	11:36	0:02	82:24	<b>505:10</b>
	Plea PCR	581:49	553:16	7:09	0:00	<b>1161:17</b>
	Trial PCR	249:31	25:20	0:46	0:00	<b>274:49</b>
	Special Action	38:25	0:25	0:00	0:00	<b>38:34</b>
	Petition for Review	42:45	1:10	0:00	0:00	<b>43:39</b>
	Mental Health Appeal	3:22	0:20	0:00	0:00	<b>3:41</b>
<b>Appellate Total</b>		<b>5239:44</b>	<b>1319:47</b>	<b>9:20</b>	<b>82:57</b>	<b>6651:48</b>
<b>GRAND TOTAL</b>						<b>57,779</b>

An analysis of Tables 5-2a and 5-3 shows that slightly more to 91 percent of all of the time recorded by the attorneys in the study was related to a case type and therefore directly related to the attorneys' representation of individual clients. The total time spent on this case-related work was 57,779 hours. Less than 9 percent of the attorneys' time was non-case related work.

A further analysis of Tables 5-2a and 5-3 shows that, of all the time recorded during the study, the attorneys spent the following percentages of time in direct relation to case work in the seven case-type categories: adult felony - 53 percent; violation of probation (without new charges) - 2.6 percent; adult misdemeanor - less than one percent; juvenile delinquency - 9.3 percent; dependency - 13.1 percent; mental health - 2.1 percent; and appeals - 10.5 percent. These percentages are similar to those contained in Table 5-2b before the multiple case related activities were distributed among the categories.

#### 5.5 Calculation of the Average Net Attorney FTE

The concept of "billable time" is one that is well understood in the private practice of law. The concept has only been accepted in the public law field in the last decade. Case weighting studies, which are increasingly common among the judiciary, prosecution, and public defenders, build into the work week appropriate time for training, administration, professional development, supervision and community service, as well as vacation time, sick time, and other leave requirements. All of these functions are a necessary part of the responsibility of a public defender attorney in Maricopa County.

All of these type of time expenditures are in addition to a public defender's direct case work and are extremely important and must be calculated in every case weighting study to arrive at the annual average "billable time" for each staff attorney. It was our responsibility in this study to develop the average number of required "billable" hours for public defender attorneys employed by the Maricopa County Public Defender system.

The starting point for developing this figure is the requirement that defender attorneys work 40 hours per week, which when multiplied by 52 weeks, equals 2,080 hours per year.

Additionally, there is a category of time that must be accounted for at the outset. This category encompasses activities which are set out in the County Personnel Policies and Procedures manual, and includes required benefits such as holidays, vacation, sick time, bereavement leave, military leave, maternity or child care leave, and any other allowable leaves

of absence. All of this time was recorded under the activity code for time away from work on the daily activity log.

Maricopa County personnel rules are set out in a manual provided to each new employee. These rules apply to all employees of Maricopa County. The manual indicates that all county employees receive 11 paid holidays each year, which includes one day of “pre-holiday” time off.

According to the manual, personal time is allocated based upon the length of service of the employee. The following is a schedule that applies to regular or unclassified employees who are in a pay status of 40 hours in a work week:

<b>Months of Credited Service</b>	<b>Hours per year</b>
1-36	120.9
37-72	144.3
73-120	159.4
121-180	205.4
181-228	221
229+	228.8

The manual also sets out the Family Medical Leave (FML) policy of Maricopa County. FML is accrued by all regular employees who are scheduled to work at least 50 percent full time and unclassified employees on the following schedule:

<b>Months of Credited Service</b>	<b>Hours per year</b>
0-36	40.3
36-72	48.1
73+	59.8

County Human Resources indicated that in FY02, the average number of personal days taken by indigent representation employees was 114.73 hours. The same survey found that the amount of family medical leave used by employees in the public defenders office averaged 24.05 hours last year.

<b>Leave Type</b>	<b>Total Number of Leave Type Hours Used</b>	<b>Average Number of Hours Per Employee</b>	<b>Average Days Per Employee</b>	<b>Average Number of Weeks Per Employee</b>
Personal	63,563.05	114.73	14.34	2.87
Family Medical	13,323.11	24.05	3.01	0.2
Totals	76,886.16	138.78	17.35	3.47

Based on 554 employees and includes all classifications in all indigent representation departments, excluding temporary employees.

We were not able to calculate further adjustments in these figures for forms of leave allowed including industrial leave, bereavement leave, jury duty leave, military leave, or other forms of allowable leave.

Table 5-4 sets out the total number of available hours for county defenders to work after accounting for holidays, vacation leave, and sick time.

**Table 5-4**  
**Annual Available Hours After Removing Holidays, Vacation Time, and Sick Time**

<b>Leave</b>	<b>Days</b>	<b>Hours</b>
Holidays	11	88
Vacation	14.34	115
Sick Time	3	24
Subtotal	28.34	227
Annual Hours / 40 hour work week		2080
Less non-billable leave		(227)
<b>Total Available</b>		<b>1853</b>

As indicated earlier in this report, there is a critical need to ensure that public defender attorneys have appropriate time built into their work year for training, professional development, community service, supervision and administration. Public defenders are no different from other public sector attorneys or private attorneys in this regard. In order to maintain the staff of attorneys who are current on the law and aware of recent developments in criminal practice and procedure, they need to have time in their work week set aside for these activities. Ongoing and specialized training falls into the same category. Public defender attorneys need time to attend meetings, seminars and training sessions in criminal law that are available both inside and outside the program. In fact, in the state of Arizona, attorneys must complete a minimum of 15 hours of continuing legal education as a mandated requirement. Additional requirements are imposed for attorneys handling death penalty cases.

Finally, it is critical that supervisors have time built into their regular work week for administration and supervision and that public defender attorneys have some time to perform community service.

There is no quantitative method that we are aware of to project precise hours for these important tasks. However, since the total available billable hour time formula that we are developing involves the average attorney time and not specific attorney time, we need only

provide an estimated number of days for these functions. We do have, for comparison purposes, the public defender case weighting studies conducted in Wisconsin and Minnesota. In Minnesota, the recommendation made and adopted by the Board of Public Defense was an average of 15 days per year or 120 hours. In Wisconsin, it was 10 days per year or 80 hours per year. Based upon the two prior studies, in Colorado the time was 12 days, or 96 hours per year.

Using these three systems as our guide, it is our recommendation that 12 days per year or 96 hours be allocated for the above functions in Maricopa County.

Table 5-5 sets out the formula used to arrive at the average total billable hours for public defenders in Maricopa County.

**Table 5-5**  
**Annual Billable Hours Maricopa County Public Defender System**

Annual Hours 40 Hour Work Week	2080
Less non-billable leave hours	(227)
Less non-billable professional development and administrative hours	(96)
Total annual billable hours	1,757

#### 5.6 Analysis Of Disposition Data

The unit of measurement used to determine the projected caseload and resulting standard for each of the case types, except for dependencies, is attorney time per disposition. The attorney-time-per-disposition figure is determined by calculating the total number of hours attributed to a case-type during the study divided by the total number of dispositions for that same case-type during the study period:

$\frac{\text{Total Attorney Hours}}{\text{Total Dispositions}} = \text{Attorney Hours Per Disposition}$
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To determine this it was necessary to first identify the amount of attorney time that each activity required for each case type. This information was entered on the daily activity log, as sample attorneys recorded the time they spent on each activity they performed in connection with their cases. For this reason, it was critical that the sample attorneys selected to record their time be reflective of all public defenders and private court-appointed lawyers in Maricopa County and that the times and dispositions recorded by the attorneys be reliable.

Table 5-6 sets out all dispositions reported in the study by case type and by agency. The last column presents the total dispositions for each case type throughout the study.

**Table 5-6**  
**Dispositions by Case Type**

		PD	OLA	OLD	OCC	ALL
Adult	Potential or Actual Capital Case	7	0	1	0	8
	All Other Homicide	10	4	7	0	21
	Dangerous Crimes Against Children	27	6	5	0	38
	Class 2-3 Felony	374	76	77	10	537
	DUI	130	0	2	0	132
	Class 4-6 Felony	1491	32	477	23	2023
	<b>All Felonies</b>	<b>2039</b>	<b>118</b>	<b>569</b>	<b>33</b>	<b>2759</b>
	Class 1	21	0	3	1	25
	Class 2-3	2	0	0	0	2
	DUI	37	0	0	0	37
	<b>All Misdemeanors</b>	<b>60</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>64</b>
	Violation of Probation (without new charges)	927	1	2	0	930
	<b>Adult Total</b>	<b>3026</b>	<b>119</b>	<b>574</b>	<b>34</b>	<b>3753</b>
Juvenile	Juvenile Felony	177	0	0	46	223
	Juvenile Misdemeanor	253	0	0	9	262
	Juvenile DUI	11	0	0	0	11
	Incorrigible	8	0	0	0	8
	Violation Of Probation	196	0	0	4	200
	Sex Crimes	5	0	0	0	5
	Drug	16	0	0	0	16
<b>Juvenile Total</b>		<b>666</b>	<b>0</b>	<b>0</b>	<b>59</b>	<b>725</b>
Dependency	Dependency	0	99	121	66	286
	GAL	0	0	0	14	14
	Severance	0	6	3	9	18
	Guardianship	0	6	7	7	20
	Dependency Appeal	0	0	1	0	1
<b>Dependency Total</b>		<b>0</b>	<b>111</b>	<b>132</b>	<b>96</b>	<b>339</b>
Mental Health	Court Ordered Evaluation	210	0	0	0	210
	Annual Review	1	0	0	0	1
	Judicial Review	0	0	0	1	1
	LARC Matter	1	0	0	0	1
<b>Mental Health Total</b>		<b>212</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>213</b>
Appellate	Felony Appeal	31	12	0	0	43
	Misdemeanor Appeal	0	0	0	0	0
	Juvenile Appeal	6	0	0	0	6
	Plea PCR	11	13	0	0	24
	Trial PCR	4	0	0	0	4
	Special Action	0	0	0	0	0
	Petition for Review	1	0	0	0	1
	Mental Health Appeal	0	0	0	0	0
<b>Appellate Total</b>		<b>53</b>	<b>25</b>	<b>0</b>	<b>0</b>	<b>78</b>
Trial Witness Representation		0	0	0	0	0
<b>Grand Total</b>		<b>3957</b>	<b>255</b>	<b>707</b>	<b>190</b>	<b>5109</b>

As Table 5-6 indicates, during the course of the study, attorneys recorded 5,109 dispositions. With the exception of dependency attorneys, dispositions were required in conjunction with the activity that resulted in final disposition of the case. The category for which the largest number of dispositions was recorded during the study period was felonies: 2,759 felony dispositions were recorded, or 54 percent of the total dispositions. Of the violation of probation cases (without new charges), 930 dispositions were reported, or approximately 18 percent of all dispositions. Only 64 adult misdemeanors were reported disposed of, which is slightly more than one percent of the total dispositions.

Roughly 14 percent of the total dispositions recorded (725) were for juvenile delinquencies and juvenile probation violations.

As discussed earlier, “dispositions” in dependency cases were recorded differently from dispositions in adult and juvenile delinquency matters. Dependency cases were tracked using new assignments, or filings, rather than dispositions. When an attorney was assigned a new dependency, severance, or guardianship case, he or she was to record a disposition code at that time. For all cases in the case-type category of dependency, there were a total of 339 dispositions reported, which was 6.6 percent of all the dispositions during the time period.

A total of 213 dispositions were reported for mental health cases, which was slightly more than 4 percent of the total 5,109 dispositions. There were 78 appellate matters disposed of, or roughly 1.5 percent of the total dispositions.

Finally, of the total number of 5,109 dispositions recorded during the time period, 77 percent were recorded by the Public Defender, 5 percent by the Legal Advocate, 14 percent by the Legal Defender, and 4 percent by contractors.

Not surprisingly, 54 percent of all of the cases disposed of during the study period were felonies, since felonies make up a large percentage of the work of public defenders in Maricopa County as opposed to misdemeanors that are primarily handled by the public defender for the City of Phoenix.

In further analyzing Table 5-6, the distribution of cases among the four agencies becomes clear. For example, there were no dispositions recorded on juvenile delinquencies by either OLA or OLD. Likewise, there was only one mental health disposition recorded by an office other than the Public Defender.

In reviewing Table 5-6, which displays dispositions reported by attorneys during the time study, it is important to note that there were a few categories of cases that had very few

dispositions and therefore were not sufficient to establish quantitative workload or caseload standards for Maricopa County.

Not surprisingly, during the 12 week period there were only nine dispositions for actual or potential capital cases. As we indicated earlier, there are also a very small number of misdemeanor dispositions even when combining the Class 1, Class 2-3, and DUI specific case types.

## 5.7 Average Hours Per Disposition

Table 5-7 shows the average number of hours per disposition for all attorneys who participated in the time study.

In examining Table 5-7, in order to weight the various case types and to develop caseload-workload standards, it is necessary to review not only the average amount of time for each major type of case and sub-type of case, but also to examine the total number of dispositions recorded during the time study for each of these 33 case type codes.

Referring back to Table 5-6, we can determine the total number of dispositions in the study for each of the 33 case type codes. These figures appear in the last column of Table 5-7.

**Table 5-7  
Average Hours per Disposition**

<b>Hours per Disposition</b>		<b>Hours per Disposition</b>	<b>Number of Dispositions</b>
Adult	Potential or Actual Capital Case	409:15	8
	All Other Homicide	154:00	21
	Dangerous Crimes Against Children	55:07	38
	Class 2-3 Felony	22:58	537
	DUI	9:23	132
	Class 4-6 Felony	5:36	2023
	<b>All Felonies</b>	<b>12:09</b>	<b>2759</b>
	Class 1	7:22	25
	Class 2-3	6:14	2
	DUI	6:27	37
	<b>All Misdemeanors</b>	<b>6:48</b>	<b>64</b>
	Violation of Probation (without new charges)	1:45	930
<b>Adult Total</b>		<b>9:29</b>	<b>3753</b>
Juvenile	Juvenile Felony	11:45	223
	Juvenile Misdemeanor	6:22	262
	Juvenile DUI	12:57	11
	Incorrigible	3:52	8
	Violation Of Probation	4:52	200
	Sex Crimes	42:26	5
	Drug	14:41	16
<b>Juvenile Total</b>		<b>8:07</b>	<b>725</b>
Dependency	Dependency	23:24	286

	GAL	4:08	14
	Severance	59:00	18
	Guardianship	11:32	20
	Dependency Appeal	247:59	1
<b>Dependency Total</b>		<b>24:27</b>	<b>339</b>
Mental Health	Court Ordered Evaluation	6:14	210
	Annual Review	7:59	1
	Judicial Review	18:32	1
	LARC Matter	5:16	1
<b>Mental Health Total</b>		<b>6:18</b>	<b>213</b>
Appellate	Felony Appeal	107:32	43
	Misdemeanor Appeal		0
	Juvenile Appeal	84:11	6
	Plea PCR	48:23	24
	Trial PCR	68:42	4
	Special Action		0
	Petition for Review	43:39	1
	Mental Health Appeal		0
<b>Appellate Total</b>		<b>85:16</b>	<b>78</b>
<b>GRAND TOTAL DISPOSITIONS</b>			<b>5109</b>

Once hours-per-disposition have been calculated, the equation to determine workload is calculated in the following manner. First, determine the available hours the average attorney can work per year. Next, divide the total available attorney hours by the hours-per-disposition figure.

$$\frac{\text{Attorney Hours Available Per Year}}{\text{Hours Per Dispositions}} = \text{Workload}$$

However, before we provide the workload measures among the specific case types that we found to be statistically relevant, there are a few additional steps to be taken, including an analysis of the data for the various case enhancers and how they might affect the workload measures and an analysis of the workload of the RCC and EDC staff attorneys.

## 5.8 Cases with Enhancers

As discussed in Chapter 4 of this report, staff attorneys and management were concerned about capturing information during the time study that reflected the specific time required to handle cases with perceived enhancers which would increase the amount of attorney time involved. The enhancer categories included the following:

- P – Prior, Dangerous or on Probation/Parole
- J – Juvenile Charged as Adult
- X – Interpreter

Table 5-8a sets out the total number of dispositions recorded during the study on cases involving enhancers. The first column represents the total number of enhancers recorded by adult case type. The next three columns provide data by adult case type for each of the three separate enhancements. The final column shows the total number of dispositions recorded by adult case type for all cases with or without enhancers.

**Table 5-8a**  
**Cases with Enhancers - Dispositions**

<b>Case Type</b>	<b>All Enhancers</b>	<b>P (Prior, Dangerous/ Probation)</b>	<b>J (Juvenile Charged as Adult)</b>	<b>X (Interpreter)</b>	<b>All Cases</b>
Potential or Actual Capital Case	1	1	0	0	<b>8</b>
All Other Homicide	5	5	0	0	<b>21</b>
Dangerous Crimes Against Children	12	4	5	3	<b>38</b>
Class 2-3 Felony	318	273	18	60	<b>537</b>
Felony DUI	28	15	0	15	<b>132</b>
Class 4-6 Felony	471	376	7	103	<b>2023</b>
Class 1 Misdemeanor	1	1	0	0	<b>25</b>
Class 2-3 Misdemeanor	0	0	0	0	<b>2</b>
Misdemeanor DUI	1	0	0	1	<b>37</b>
Violation of Probation (without new charges)	3	0	1	2	<b>930</b>
<b>Total Adult</b>	<b>840</b>	<b>675</b>	<b>31</b>	<b>184</b>	<b>3753</b>

An analysis of Table 5-8a discloses that of the total number of adult criminal case dispositions recorded in the study (3,753), approximately 22 percent (840) had enhancers. However, the total number of enhancers coded with case dispositions was 890, which is 50 more than the case dispositions (840) displayed in the first column due to the fact a number of dispositions were recorded with two or more enhancers. Of the total 890 enhancer codes recorded with dispositions, 75.8 percent were recorded with the letter “P” (involving a prior dangerous, or on probation/parole), 3.5 percent were recorded with the letter “J” (juvenile charged as adult), and approximately 20.7 percent were recorded with the letter “X” (needing an interpreter).

Approximately 38 percent of all cases with enhancers were Class 2-3 felonies and 56 percent were class 4-6 felonies. Together, these two case types comprised 94 percent of the adult cases with enhancers. However, when compared to the total number of dispositions recorded by all attorneys, 59 percent of the class 2-3 felony dispositions had one ore more enhancers while

the percentage of class 4-6 cases with enhancers was only slightly more than 23 percent. This result is consistent with the expectations of attorneys since 675 of the enhancers were “P” (prior, dangerous, or on probation/parole), and they would be expected to occur in the more serious class 2-3 felony cases.

Table 5-8b provides the average hours per disposition for cases with enhancers for the ten adult case types.

**Table 5-8b**  
**Cases with Enhancers – Average Hours Per Disposition**

Case Type	All Enhancers	P (Prior, Dangerous/ Probation)	J (Juvenile Charged as Adult)	X (Interpreter)	All Cases
Potential or Actual Capital Case	630:08	578:03	0	0	<b>409:15</b>
All Other Homicide	80:44	61:06	0	0	<b>154:00</b>
Dangerous Crimes Against Children	26:22	41:19	11:39	31:50	<b>55:07</b>
Class 2-3 Felony	19:14	20:35	7:10	14:04	<b>22:58</b>
Felony DUI	8:18	13:06	0	2:32	<b>9:23</b>
Class 4-6 Felony	6:37	7:34	4:44	3:05	<b>5:36</b>
Class 1 Misdemeanor	2:20	0:10	0	0!	<b>7:22</b>
Class 2-3 Misdemeanor	0	0	0	0	<b>6:14</b>
Misdemeanor DUI	3:50	0	0	1:40	<b>6:27</b>
Violation of Probation (without new charges)	0:42	0	0:46	0:17	<b>1:45</b>
Total	12:53	14:23	7:50	7:48	<b>9:29</b>

Tables 5-8a and 5-8b are provided for informational purposes only. We have no source of independent information that we can use to verify the data on cases with enhancers, and only two of the case types with enhancers (class 2-3 felony and class 4-6 felony) had a sufficient number of dispositions to be statistically significant.

## 5.9 RCC and EDC Attorney Data

As indicated in Chapter 3 of this report, the courts in Maricopa County have recently initiated several programs to increase the rate of felony processing, including the creation of regional felony court centers (RCCs) and the early disposition court (EDC). The RCC program consolidated the felony case processing of 23 Justice Courts into three regional Superior Court centers. It simplified early felony case processing by having defendants appear for their preliminary hearings and arraignments in Superior Court on the same day. Felony cases are now directly filed in Superior Court through the RCCs, removing any need for the Justice Courts to process any felony cases.

Last year, the Office of the Public Defender allocated 19 full-time staff attorney positions to the RCC program. Also in 2002, at the time of our study, the Office of the Legal Defender had allocated one full-time attorney position to the RCC program. (Since then, the Legal Defender has added one full-time and one part-time attorney to the RCCs).

Another project was also initiated in the Superior Court, referred to as Early Disposition Court, where attempts are made to dispose of less serious felonies, e.g. simple drug possession cases, welfare fraud cases, and other non-violent offenses. The Office of the Public Defender has allocated eight full-time attorney positions to the EDC program. The Office of the Legal Defender has allocated three full-time attorney positions to the EDC program.

Neither the Office of the Legal Advocate nor the Office of Contract Counsel has allocated attorneys to provide representation in RCC or EDC.

A case may proceed through either RCC or EDC, depending on the type and characterization of the case. RCC and EDC are parallel programs which perform the same function, which is to attempt to dispose of less serious felony cases early on in the case process, and they handle non-trial dispositions only. If a case is not resolved in RCC or EDC, it will proceed towards trial in the Superior Court, and the case will normally be transferred from the RCC or EDC attorney to a trial attorney in the same office.

Table 5-9a reports data for the total hours reported by RCC and EDC attorneys by agency and by case type. Table 5-9b reports the same data as percentages of the total RCC and EDC attorney time.

**Table 5-9a**  
**RCC and EDC Attorney Time By Case Type**  
**With Multiple Case Related Time Distributed**

	PD	OLD	Grand Total
Potential or Actual Capital Case	15:11	0:00	15:16
All Other Homicide	14:41	0:00	14:46
Dangerous Crimes Against Children	26:12	3:15	29:32
Class 2-3 Felony	534:00	172:37	706:17
DUI	234:59	0:15	236:31
Class 4-6 Felony	3564:32	1120:45	4683:33
Class 1	91:11	0:22	92:03
Class 2-3	0:12	0:41	0:53
DUI	13:21	0:00	13:25
Violation of Probation (without new charges)	5:25	0:17	5:44
<b>Adult Total</b>	<b>4499:50</b>	<b>1298:15</b>	<b>5798:05</b>

**Table 5-9b**  
**Percent of RCC and EDC Attorney Time By Case Type**

### With Multiple Case Related Time Distributed

<b>Percent of Category</b>			
<b>Case Type</b>	<b>PD</b>	<b>OLD</b>	<b>Grand Total</b>
Potential or Actual Capital Case	0%	0%	0%
All Other Homicide	0%	0%	0%
Dangerous Crimes Against Children	1%	0%	1%
Class 2-3 Felony	12%	13%	12%
DUI	5%	0%	4%
Class 4-6 Felony	79%	86%	81%
Class 1	2%	0%	2%
Class 2-3	0%	0%	0%
DUI	0%	0%	0%
Violation of Probation (without new charges)	0%	0%	0%
<b>Adult Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

An analysis of Table 5-9b shows that 81 percent of all the time recorded by the RCC and EDC attorneys in the study was recorded for class 4-6 felony cases. Another 12 percent was recorded for class 2-3 felonies, and 4 percent was recorded for felony DUI cases. Together, these three case types account for 97 percent of all RCC and EDC attorney time. The balance of the time was distributed among the other seven adult felony case types.

Table 5-9c sets out the total number of dispositions reported by RCC and EDC attorneys by the three major categories of felony cases handled by RCC and EDC attorneys during the study.

**Table 5-9c**  
**RCC and EDC Dispositions by Case Type**

<b>Case Type</b>	<b>PD</b>	<b>OLD</b>	<b>Total</b>
Class 2-3 Felony	65	9	<b>74</b>
Felony DUI	58	0	<b>58</b>
Class 4-6 Felony	1025	389	<b>1414</b>
<b>Total</b>	<b>1148</b>	<b>398</b>	<b>1546</b>

An analysis of the table shows that Class 4-6 felonies accounted for 91.5 percent of the RCC and EDC dispositions.

Table 5-9d displays the average hours per disposition for RCC and EDC cases in the three largest felony case categories.

**Table 5-9d**  
**RCC and EDC Average Hours Per Disposition**

<b>Case Type</b>	<b>PD</b>	<b>OLD</b>	<b>Total</b>
Class 2-3 Felony	8:12	19:10	<b>9:32</b>
Felony DUI	4:03		<b>4:04</b>
Class 4-6 Felony	3:28	2:52	<b>3:18</b>

The average hours per disposition are as follows: class 2-3 felonies – 9 hours, 32 minutes; felony DUIs – just over 4 hours; and class 4-6 felonies – 3 hours, 18 minutes. These data are consistent with previous statements made by public defenders and contained earlier in this report. In assessing the data, it is important to emphasize that the RCC attorney’s primary role is to provide early representation at arraignment and preliminary hearings in Superior Court in an attempt to resolve cases. If the cases are not resolved at RCC, they are transferred to felony trial attorneys in both the Public Defender and Legal Defender offices for further work. A similar process is normally followed by EDC attorneys (although on a few occasions an EDC attorney in the Public Defender Office may continue to represent the defendant in Superior Court if the case is not resolved in EDC).

Table 5-9e displays the total number of dispositions recorded by the non-RCC and EDC attorneys for the same three major felony categories.

**Table 5-9e**  
**Non-RCC and EDC Dispositions by Case Type**

<b>Case Type</b>	<b>PD</b>	<b>OLD</b>	<b>Total</b>
Class 2-3 Felony	309	68	<b>463</b>
Felony DUI	72	2	<b>74</b>
Class 4-6 Felony	466	88	<b>609</b>
<b>Total</b>	<b>847</b>	<b>158</b>	<b>1146</b>

An analysis of Table 5-9e shows that class 4-6 felony dispositions accounted for 53 percent of the non-RCC and EDC dispositions for the three case types, and class 2-3 felony dispositions accounted for 40 percent.

Table 5-9f shows the average hours per disposition for the non-RCC and EDC attorneys for the same three major felony categories.

**Table 5-9f**  
**Non-RCC and EDC Average Hours Per Disposition**

<b>Case Type</b>	<b>PD</b>	<b>OLD</b>	<b>Total</b>
Class 2-3 Felony	25:53	19:42	<b>24:50</b>
Felony DUI	14:06	1:25	<b>13:37</b>
Class 4-6 Felony	11:45	11:53	<b>11:31</b>

In order to compare the time per disposition for the three felony case categories, we must first look at the data for all dispositions in the three categories. An examination of Table 5-7, Dispositions by Case Type, shows that for the entire study there were 537 class 2-3 felony dispositions, 132 felony DUI dispositions, and 2,023 class 4-6 felony dispositions, for a total of 2,692 dispositions.

A review of Table 5-7 and Table 5-9c shows that RCC and EDC attorneys disposed of 74 of the 537 total dispositions for class 2-3 felonies, or roughly 14 percent. For felony DUIs, the RCC and EDC attorneys disposed of 58 of the 132 total dispositions, or 44 percent. RCC and EDC attorneys also disposed of 1,414 of the 2,023 class 4-6 felony cases, or approximately 70 percent. Overall, these data disclose that during the study period, 57 percent of the felony cases were disposed in RCC or EDC. This figure is almost identical to the 55 percent disposition rate previously reported by the courts.

To further analyze these data, we reviewed the average times per disposition for all class 2-3 felony, felony DUI, and class 4-6 felony cases disposed of by non-RCC and EDC attorneys with the average times per disposition for the same case type categories disposed of by the RCC and EDC attorneys. Table 5-9d and Table 5-9f show that the average times for dispositions for the same three felony case categories as reported by the designated and non-designated RCC and EDC attorneys were:

RCC and EDC Attorneys

- Class 2-3 felony: 9 hours, 32 minutes
- Felony DUI: 4 hours, 4 minutes
- Class 4-6 felony: 3 hours, 18 minutes

Non-RCC and EDC Attorneys

- Class 2-3 felony: 24 hours, 50 minutes
- Felony DUI: 13 hours, 37 minutes
- Class 4-6 felony: 11 hours, 31 minutes

The analysis performed above permits us to develop separate workload standards in these three felony case type categories for all cases, cases handled by RCC and EDC attorneys, and cases handled by non-RCC and EDC attorneys (see Table 5-10).

#### 5.10 Caseload/Workload Standards

Having completed the full analysis of the data, we are now able to set out all of the Maricopa County public defender workloads that we find to be statistically relevant.

Table 5-10 sets out the annual caseload standards. Specifically, Table 5-10 presents the final calculations and the resulting workload standards. Specifically, Table 5-10 contains the following information:

- Case Type: The first column contains a list of each case type that we find to be statistically relevant.
- Average Hours Per Disposition: The second column provides the average number of attorney hours required to provide representation in each of the case type categories.
- Annual Billable Hours: The third column contains the annual billable hours that we calculated in Table 5-5 for a Maricopa County.
- Caseload/Workload Standard: The last column contains the workload standards by case category, or the average annual caseload standards for one full-time staff attorney in Maricopa County assuming the attorney handled only the number of cases in each individual category. These standards were calculated by dividing the average FTE attorney in column three by the case type standard time in column two.

**Table 5-10**  
**Maricopa County Public Defender Caseload/Workload Standards**  
**Statistically Relevant Categories**

<b>Case Type</b>	<b>Average Hours Per Disposition</b>	<b>Annual Billable Hours</b>	<b>Caseload/ Workload Standard</b>
Class 2-3 Felony (All)	22:58	1757	76.5
RCC-EDC (Only)	9:32	1757	184.3
Non RCC-EDC	24:50	1757	70.7
Felony DUI (All)	9:23	1757	187.2
RCC-EDC (Only)	4:04	1757	432.0
Non RCC-EDC	13:37	1757	129.0
Class 4-6 Felony (All)	5:36	1757	313.8
RCC-EDC (Only)	3:18	1757	532.4
Non RCC-EDC	11:31	1757	152.6
Violation of Probation (Without New Charges)	1:45	1757	1004.0
Juvenile Felony	11:45	1757	149.5
Juvenile Misdemeanor	6:22	1757	275.9
Dependency (Exclusive of Severance or Guardianship)	23:24	1757	75.1
Mental Health Court Ordered Evaluation	6:14	1757	281.9

#### 5.11 Limitations on Caseload/Workload Standards

After having performed a number of case-weighting studies of public defender organizations around the country, it is important to emphasize the role that workload standards can play and the concomitant limitation of their use.

First, and most importantly, the workload standards that we have recommended represent the average time requirements. Even within the case type codes that were used in the study, the individual cases vary widely with respect to the amount of work that they entail. Among the variables that need to be considered in an individual case are the complexity of the case, the number of witnesses, the number of charges, the background of the defendant, the defendant's prior criminal history, the seriousness of the crime, the complexity of the law, etc.

These variations obviously place limitations on the application and use of the standards. Broad-based averages, such as the ones that we have recommended, are entirely appropriate for developing staffing estimates which, in our view, is the primary purpose for which the standards were developed.

However, we state with emphasis that caseload standards are not appropriate for measuring the quality of representation provided by any individual public defender. Individual caseloads vary substantially from one attorney to another in terms of workload, and any future assignment decisions or productivity measurements must continue to be based on a detailed knowledge of the relationship between a public defender and her client on a case-by-case basis.

Another reason why the workload standards proposed in this report should not be used for case assignment and performance measurement purposes is that the caseload standards are set forth in terms of an average annual caseload based upon a particular type of case, and not a mix of cases. Many staff attorneys in Maricopa County handle more than one case type, and it is difficult to pro rate the average time and workload for the two or more case types combined.

Another limitation on the recommended standards is that they apply only to non-capital trial cases. In the event that an attorney from a trial office is assigned a capital case, that attorney should not be expected to adhere to these caseload standards while work continues on the capital case. Such an attorney's caseload should be restricted, as much as possible, to that capital case.

With these limitations, we return to the primary purpose of developing caseload/workload standards, which is to provide a reliable estimate of the trial attorney staffing requirements for the Maricopa County indigent defense system given a projected annual caseload. The standards developed in this study and the other recommendations that accompany them are fully appropriate and reliable for estimating staffing needs, and we recommend that they be used by Maricopa County and its indigent defense agencies in formulating annual budget requests.